

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Fair Isaac Corporation,) File No. 16-cv-1054(DTS)
a Delaware Corporation,)
Plaintiff,)
v.)
Federal Insurance Company,) Courtroom 14W
an Indiana corporation,) Minneapolis, Minnesota
and ACE American Insurance) Wednesday February 15 2023
Company, a Pennsylvania) 9:00 a.m.
Corporation,)
Defendants.)

BEFORE THE HONORABLE DAVID T. SCHULTZ
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

(JURY VOIR DIRE PROCEEDINGS - SEALED)

Proceedings recorded by mechanical stenography;
transcript produced by computer.

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JURY VOIR DIRE

(9:22 a.m.)

(IN OPEN COURT)

THE COURT: All right. Everyone, go ahead and be seated. Thank you.

So you've all managed to pass the first test of whether you can be jurors. You navigated the obstacles we've thrown in your path to getting a seat, so thank you.

All right. Good morning, everyone, members of the jury panel. You've been called to this courtroom for the purpose of selecting a jury in a civil trial. Not a criminal case, a civil case.

My name is David Schultz. I'm a United States Magistrate Judge, and I will be one of the judges presiding over this trial. Now, I say "one of the judges," because in our judicial system, there are actually two judges in the courtroom. One of the judges to decide questions of law, and that will be me. And one judge to decide questions of fact, and that will be you, the jury. Actually, those of you who are selected to be the jury in this case.

Before we get into the rest of the process, the first question for any of you in the box and in the gallery: Is anyone having difficulty hearing or understanding what I am saying? If so, please raise your hand. Okay, good.

In a few minutes, we're going to start jury

1 APPEARANCES:

For Plaintiff: MERCHANT & GOULD P.C.
BY: ALLEN W. HINDERAKER
HEATHER J. KLIEBENSTEIN
PAIGE S. STRADLEY
MICHAEL A. ERBELE
JOSEPH W. DUBIS
GABRIELLE L. KIEFER
150 South Fifth Street, #2200
Minneapolis, Minnesota 55402

For Defendants: FREDRIKSON & BYRON
BY: TERENCE J. FLEMING
LEAH C. JANUS
CHRISTOPHER D. PHAM
RYAN C. YOUNG
PANHIA VANG
200 South Sixth Street, #4000
Minneapolis, Minnesota 55402

O'MELVENY & MYERS LLP
BY: LEAH GODESKY
ANTON METLITSKY
DARYN E. RUSH
ROXANA GUIDERO
Times Square Tower
7 Times Square
New York, New York 10036

Court Reporters: RENEE A. ROGGE, RMR-CRR
KRISTINE MOUSSEAU, CRR-RPR
MARIA V. WEINBECK, RMR-FCRR
PAULA RICHTER, RMR-CRR-CRC
United States District Courthouse
300 South Fourth Street, Box 1005
Minneapolis, Minnesota 55415

* * *

selection. You're probably a little nervous, but don't worry, we will give you guidance and direction at each step of the process.

To make sure that both parties receive a fair trial by an impartial jury, we're going to ask you some questions. I'll ask you some questions first and then the lawyers will be given a brief opportunity to follow up and ask additional questions. You will be under oath when you answer our questions, so you must answer truthfully.

I ask you now all to please stand, all of you, and face my courtroom deputy, who will administer the oath to you.

THE CLERK: Please raise your right hand.

(Oath given to the jury.)

THE COURT: All right. Thank you. You may be seated.

We currently have 18 prospective jurors in what we call the well. That's the portion of the courtroom where the actual trial takes place. The selection and order of these jurors, and all of you, were randomly done by a computer. At the end of the selection process, we will have a jury of 12, and all 12 of you who are in the box at the end of that process will serve on the jury. As you can see, we have more than 12 of you here this morning. So as a matter of arithmetic, some of you will not be called into

1 trial itself. Unless I tell you otherwise, all of my
2 instructions, both those that I give you now and those I
3 give you later, are equally binding and must be followed.

4 As I've just described, this is a civil case
5 brought by FICO against Federal for breach of the license
6 agreement and for copyright infringement and against ACE
7 American for copyright infringement. There is also a claim
8 by Federal against FICO for breach of the license agreement
9 and the Covenant of Good Faith and Fair Dealing. It will be
10 your duty to decide from the evidence whether either party
11 is liable to the other on any of these claims.

12 From the evidence you will decide what the facts
13 are. You are entitled to consider the evidence in light of
14 your own observations and experiences in the affairs of
15 life. You may use reason and common sense to draw
16 deductions or conclusions from the facts that have been
17 established by the evidence. You will then apply those
18 facts to the law that I give you in these and in my other
19 instructions, and in that way, reach your verdict.

20 You are the sole judges of the facts, but you must
21 follow the law as stated in my instructions whether you
22 agree with it or not. In deciding what the facts are, you
23 may have to decide what testimony you believe and what
24 testimony you do not believe. You may believe all of what a
25 witness said or only part of it or none of it.

1 In deciding what testimony to believe, consider
2 the witness' intelligence, their opportunity to have seen or
3 heard the things they testify about, their memories, any
4 motives they may have for testifying a certain way, their
5 manner while testifying, whether they said something
6 different at an earlier time, the general reasonableness of
7 their testimony, and the extent to which their testimony is
8 consistent with other evidence that you believe.

9 Do not allow sympathy or prejudice to influence
10 you. The law demands of you a just verdict, unaffected by
11 anything except the evidence, your common sense and the law
12 as I give it to you.

13 You should not take anything that I may say or do
14 during this trial as indicating what I think of the evidence
15 or what I think your verdict should be. I may, for example,
16 ask a question of a witness. If I do, it is only to make
17 certain that I understand the witness' testimony. It is not
18 to imply that I believe or do not believe the witness or
19 that I think particular testimony is or is not important or
20 that I have any view whatsoever about the case. If at any
21 time I slip and make a comment about the facts, you should
22 disregard it. I decide all questions of law that arise
23 during the trial, but you jurors decide all questions of
24 fact.

25 I have mentioned the word "evidence". Evidence

1 includes the testimony of witnesses, documents, and other
2 things received as exhibits, any facts that have been
3 stipulated, that is formally agreed to by the parties, and
4 any facts that have been judicially noticed; that is facts
5 that I say you may but are not required to accept as true,
6 even without evidence.

7 Certain things are not evidence. I will list
8 those things for you now:

9 Statements, arguments questions and comments by a
10 lawyer are not evidence.

11 Objections are not evidence. The parties have a
12 right and sometimes an obligation to object when they
13 believe something is improper. You should not be influenced
14 by the objection. You should not, for example, be
15 prejudiced in any way against an attorney who makes an
16 objection or the party whom he or she represents. If I
17 sustain an objection to a question or an exhibit, you must
18 ignore the question or the exhibit and must not try to guess
19 what information that might have been.

20 Testimony and exhibits that I strike from the
21 record or tell you to disregard are not evidence and must
22 not be considered.

23 Anything -- exhibits that are identified by a
24 party but are not received in evidence are not evidence.

25 Anything you see or hear about this case outside

1 the courtroom is not evidence.

2 Furthermore, a particular item of evidence is
3 sometimes received for a limited purpose only. That is, it
4 can be used by you only for one particular purpose and not
5 for any other purpose. I will tell you when that occurs,
6 and instruct you on the process -- or on the purposes for
7 which the item can and cannot be used. You should pay
8 particularly close attention to such an instruction, because
9 unlike the final instructions that I will give you at the
10 end of the case, an instruction about a particular piece of
11 evidence may not be able -- may not be available to you in
12 writing later in the jury room.

13 Finally, some of you may have heard the terms
14 direct evidence and circumstantial evidence. You should not
15 be concerned with those terms. The law makes no distinction
16 between direct and circumstantial evidence. You should give
17 all evidence the weight and value you believe it is entitled
18 to receive.

19 Your verdict will depend on whether you find that
20 certain facts have been proved by the greater weight of the
21 evidence. To prove something by the greater weight of the
22 evidence is to prove that it is more likely true than not
23 true. To determine whether a fact is more likely true than
24 not true, you must consider all of the evidence and decide
25 which evidence is more believable. If on any issue in the

1 of all these other insurance companies, and ACE American
 2 became the one using Blaze Advisor to sell insurance. No
 3 license, no permission. As a consequence, that use is
 4 copyright infringement. FICO did not learn of ACE
 5 American's use of Blaze Advisor until this lawsuit. So in
 6 the chronology, we have the unlicensed use by Chubb & Son,
 7 Federal being responsible, and the unlicensed use by ACE
 8 American.

9 So now let me turn to the remedy or the damages
 10 that FICO seeks in this lawsuit. The employees of the three
 11 different insurance companies were able to use Blaze Advisor
 12 because Chubb & Son violated that provision of 3.1 regarding
 13 not permitting anybody but a Chubb & Son employee to use it.
 14 So there's a period of time before the license agreement is
 15 terminated that FICO seeks to be compensated for all the
 16 applications that these foreign insurance companies used to
 17 sell insurance with Blaze Advisor. And then the license
 18 agreement is terminated, but just like Chubb & Son, the
 19 foreign insurance companies don't stop. And so FICO seeks
 20 to be compensated for their use until their use actually
 21 does stop.

22 There is the period of time when Chubb & Son is
 23 using Blaze Advisor after termination, and FICO seeks to be
 24 compensated for that. And then there is the period of time
 25 where ACE American, unlicensed, infringer of copyrights,

1 uses Blaze Advisor on applications, and FICO wants to be
 2 compensated for that.

3 So FICO looks at the damages in this way: The
 4 unlicensed use of the foreign insurance companies before
 5 termination, foreign insurance company use after
 6 termination, unlicensed Federal use after termination, and
 7 then ACE American's copyright infringement. So how do we
 8 determine the dollar value to compensate FICO? That, ladies
 9 and gentlemen, is your job.

10 Our last witness will be Bill Waid, a person who
 11 has negotiated many hundreds of Blaze Advisor license
 12 agreements over the years. And as I mentioned, there is no
 13 one standard fee. And he'll explain first, you know, FICO's
 14 value-based pricing. He'll look to some pricing methodology
 15 that FICO has used since 2003. He'll testify how the
 16 marketplace has accepted that pricing methodology for the
 17 last 20 years. He'll relay his experience in negotiating
 18 license agreements under the unique facts of each
 19 circumstance. Every license, every licensee, every
 20 circumstance has its own uniqueness to it.

21 There is one set of circumstances when you're
 22 trying to negotiate a license agreement with a brand new
 23 client, and there's another set of circumstances when you're
 24 trying to figure the fair value to be compensated when the
 25 license agreement has been terminated but the former client

1 needs a transition license to move away from using Blaze
 2 Advisor.

3 Those circumstances are quite different. The
 4 motivations between those circumstances are quite different.
 5 And Mr. Waid will explain that Chubb & Son looks to the
 6 total lifetime value of the relationship when it's
 7 negotiating the fee. And so he will discuss total lifetime
 8 value in the context of a brand new client, total lifetime
 9 value in the context of the circumstance where a former
 10 client needs a transition license.

11 The evidence will also consider and present for
 12 your consideration well, how is Blaze Advisor used? How
 13 does the licensee use Blaze Advisor? Well, in this case, it
 14 was used -- it was central to the licensee's business
 15 because it was used to sell insurance, and their business is
 16 selling insurance.

17 Another consideration, and you figure out the fair
 18 fee, is how much insurance was sold using Blaze Advisor? As
 19 I mentioned, it's about \$5 billion for each unlicensed year.

20 Of course, licensees have their counterpoints to
 21 be made in a negotiation. Mr. Waid will explain his
 22 experience with respect to that as well.

23 And then at the end you will be the ones to
 24 decide, what's the compensation to FICO for the years of
 25 unlicensed use in these many applications to sell insurance?

1 And, now, let me now turn to what the law calls
 2 disgorgement. This is the issue that the Court will be
 3 seeking your advice on.

4 Disgorgement is a legal word that means taking
 5 away from the infringer the benefits that are gained by the
 6 infringement. And FICO seeks an award of disgorgement
 7 because the infringement of intellectual property has
 8 consequences. So says the copyright law of the United
 9 States.

10 Here, over the years of infringement, Blaze
 11 Advisor was used in connection with selling \$21 billion
 12 worth of insurance. That's a huge number. Putting that
 13 number in context, during that same period of time, Chubb
 14 Limited sold more than \$150 billion worth of insurance. The
 15 amount of benefit to be taking away from the defendants is
 16 about 14 percent of that total.

17 Again, returning to the Chubb Limited 2018 annual
 18 report, technology is a competitive weapon. In this case,
 19 the defendants took the know-how, their own know-how of how
 20 to sell insurance, but then they made it operational by
 21 automating the process of selling and by automating the
 22 decisions necessary to sell insurance. As stated in the
 23 RFI, they needed Blaze Advisor in order to expand into the
 24 small and mid-markets.

25 We will have an industry expert by the name of

1 Bick Whitener, who has studied hundreds of the documents
2 that the defendants have produced in this litigation, and he
3 will explain how they used Blaze Advisor in order to sell
4 insurance. In conclusion, his testimony is that the use of
5 Blaze Advisor made a significant contribution to the sale of
6 insurance.

7 Defendants have asserted counterclaims against
8 Blaze Advisor in reaction to the lawsuit. For all of the
9 reasons and the evidence that I have just overviewed, FICO
10 properly terminated the license agreement. For all the
11 reasons that I have just overviewed, that termination was in
12 good faith. For all the reasons I have overviewed, the
13 copyright and counterclaims have no merit.

14 So in summary, FICO brought this lawsuit because
15 its software was used without permission for years. That
16 unlicensed use was a knowing use. It was in disregard of
17 the license agreement, and it was in disregard of FICO's
18 copyrights.

19 We request to be compensated for the years of that
20 unlicensed and infringing use, and we request that the
21 benefits that the infringers gained from their infringement
22 of FICO's copyrights be taken away.

23 I thank you for your attention.

24 THE COURT: Thank you, Mr. Hinderaker.

25 Members of the jury, we're going to take our

1 morning recess now, and so we'll ask that you be back in the
2 courtroom at 25 minutes to 11:00 on that clock.

3 Now, remember, no research, no talking to outside
4 people, and you can talk amongst yourself about anything
5 except this case.

6 Thank you. We're in recess.

7 (Jury leaves the courtroom.)

8 (JURY NOT PRESENT)

9 THE COURT: Federal, I'm going to switch the input
10 here and make sure that it works for you.

11 MS. GODESKY: Sure.

12 THE COURT: Okay. Why don't you put something up,
13 anything, just to make sure that it's coming up.

14 Okay. Very well.

15 All right. We're in recess until 25 minutes to
16 11:00.

17 Counsel, nothing to talk about right now, right?

18 MR. HINDERAKER: I assume the slides have been
19 changed?

20 MS. GODESKY: Yes.

21 THE COURT: All right. Thank you.

22 (Recess taken at 10:21 a.m.)
23 (IN OPEN COURT)

24 (10:37 a.m.)
25

1 (Jury seated.)

2 THE COURT: Thank you everyone. You may be
3 seated.

4 All right. Ms. Godesky.

5 MS. GODESKY: Thank you.

6 Good morning, everyone. As you know by now, my
7 name is Leah Godesky, and I represent the defendants in this
8 case, Federal Insurance Company and ACE American Insurance
9 Company. As you will hear, both defendants are what's
10 commonly referred to as the Chubb Group of Insurance
11 Companies. And many of the witness from Chubb that you'll
12 see testify here today will call themselves Chubb employees.
13 And it will be a shorthand that I use a lot as well. I'm
14 very proud to represent Chubb in this case, and it means a
15 lot to these companies.

16 I'll be joined at counsel table throughout by
17 Mr. Claudio Ghislanzoni, who's sitting over there with the
18 glasses, and he's travelled all the way from England to be
19 here for the trial every day. Maxwell Bryer, who is an
20 attorney at Chubb, is also sitting next to Mr. Ghislanzoni.

21 Claudio being here from England is just a preview
22 of something you'll see about a lot of the Chubb witnesses
23 you'll meet during this trial because this case is about
24 technology infrastructure. And as you'll learn, you need
25 hands from all around the world to keep the technology

1 infrastructure of a big company like Chubb running.

2 I also want to introduce again Leah Janus -- there
3 are two Leahs -- and Terry Fleming, who are with the
4 Fredrikson firm right here in Minneapolis. And they, like
5 me, are representing -- lawyers representing the defendants
6 in this case, and they'll be presenting witnesses during
7 trial.

8 We also have Vanessa Wheeler, who's sitting in the
9 back there, and she's going to be running our exhibits and
10 videos so you can see documents throughout trial.

11 We're also working with a few other lawyers and
12 paralegals that you'll see from time to time because they're
13 working behind the scenes to keep things running as
14 efficiently as possible because we do not want to waste your
15 time. This is a very important case to our clients, and
16 it's very important to us that you're all taking time out of
17 your very busy lives to be here, so we are going to be as
18 efficient as possible, and I'm going to get started right
19 now.

20 So FICO just told you -- made references to the
21 fact that the defendants in this case did things like they
22 had indifference to the copyright, they were ignoring a
23 contract, there were unauthorized third parties using Blaze.
24 And all of those references are intended to make you feel
25 like Federal and ACE did something wrong and they should be

1 dimensions, right. So let's back it up a little bit, and we
 2 talk about high-volume applications. We used the
 3 illustration before about a couple hundred to 500 to
 4 thousands to maybe millions of decisions, right? So by
 5 having the control of those aspects through Blaze Advisor, I
 6 can actually introduce new concepts to subset of the
 7 population that I'm working with, I can actually throttle
 8 certain areas. I have the full control from a business
 9 without actually having to change anything. And the beauty
 10 is is Blaze Advisor doesn't care if it's 1,000 decisions
 11 today and tomorrow is a million. It doesn't care, right?
 12 So you have the centralized control of being able to do
 13 that.

14 Q. And then it goes on, control over the results of
 15 high-volume operational decisions. I think we understand
 16 what high-volume is from your testimony. What do you mean
 17 by operational decisions?

18 A. So operational decisions actually impact the tactical
 19 decision that I'm actually making at that point in time,
 20 right? So a business decision is I would like to originate
 21 100 more applications a month, right? That's a
 22 business-level decision.

23 The operational decision is within that context, I
 24 know exactly what decision I've made within what I'm trying
 25 to do so I can actually prove it down.

1 Q. And what's the technology that brings the rules of
 2 decision to the point that where the decision is made and
 3 something happens in the marketplace?

4 A. That's the flexibility that we talked about upfront.

5 Now, there's one angle here that's also off of the
 6 ability to handle high-volume operational decisions and
 7 there's a semicolon there that says "scale." The scale is
 8 what's very important in these context, right? So as I
 9 achieve my frontline business goal of originating more
 10 customers, now I want to go after a bigger market, right?

11 So my scale changes. And then by centralized control that
 12 I'm making consistently across, regardless of how many
 13 providers are reselling my insurance packages, how many
 14 customers are applying for that, the Blaze Advisor doesn't
 15 care.

16 Q. It can scale?

17 A. It scales. Yes.

18 MR. HINDERAKER: We can take that down now.

19 BY MR. HINDERAKER:

20 Q. And let me turn now to your personal experience with
 21 Chubb. Over the years, about how many meetings have you
 22 had, whether in-person or Zoom or telephone?

23 A. So my interaction with Chubb was pre-Zoom, so we had a
 24 lot of meetings in person and telephone. So I can recall
 25 three or four meetings in person post the sale of Blaze

1 Advisor to Chubb and countless phone conversations along the
 2 way.

3 Q. And in general, the purpose of those discussions --
 4 well, first, who at Chubb were you speaking with?

5 A. So at various levels. So typically the conversations at
 6 Chubb would be with architects, so people that were, you
 7 know, in charge of the infrastructure systems. Some
 8 business owner capacity that would represent the business,
 9 and I'm a little fuzzy with names, so, you know, it's been a
 10 long time.

11 Another set of conversations would be with Chubb
 12 leadership around sort of the value of Blaze Advisor and
 13 things that we're doing inside of their environment.

14 Q. So you've had -- you did, in fact, have conversations
 15 with those three categories of people?

16 A. Yeah. And one more category I forgot, data analyst as
 17 well. So think of the data scientist, if you will, the
 18 people that are building algorithms to evaluate the
 19 customer.

20 Q. Can you tell us the subject matter of these meetings in
 21 general?

22 A. So the subject matter of most of the meetings were
 23 around, we're using Blaze Advisor. We have new problem sets
 24 that we're trying to solve. For example, one of the most
 25 prevalent conversations that we've had is we have an

1 analytic model, so think of it as fancy math, right? Fancy
 2 math to determine some aspect of their customer.

3 Well, in this process, they would develop these
 4 analytic models over here with other data systems, but
 5 taking that analytic data model and actually putting it in
 6 this framework, this application that Blaze Advisor
 7 provides, is complicated. So Blaze Advisor provides an
 8 ability for them to ingest those models directly into this
 9 overall process. So most of the conversations I had past
 10 that was how Blaze Advisor and some of the remodel
 11 translating techniques would support that.

12 There was also conversations around best practices
 13 on growing Blaze Advisor within different problem sets and
 14 the governance associated with that. So how do they
 15 actually organize themselves around it, et cetera.

16 Q. Model translator, that's an add-on product to Blaze
 17 Advisor?

18 A. Model translator is an add-on product to Blaze Advisor.

19 Q. So I guess I heard you say so far sometimes the
 20 discussion was about additional possible FICO add-ons to
 21 Blaze Advisor and other times how to better use or more
 22 fully use Blaze Advisor?

23 A. That's correct.

24 Q. Okay. Did you gain an understanding of the extent to
 25 which Blaze Advisor was integrated into their business at

1 Chubb?

2 **A. So in those conversations, it was apparent that Blaze**

3 **Advisor was central to all of their decision-making process**

4 **within the group that we were talking about. And the reason**

5 **why they were looking at leveraging that is because they**

6 **wanted to extend other groups' works into Blaze Advisor. So**

7 **it was pivotal to what they were doing.**

8 **Q. Let me focus you on some meetings in 2015, 2016.**

9 **A. Okay.**

10 **Q. So in all of your occasions of meeting with Chubb at**

11 **that time frame, were you the initiator to be involved in**

12 **the conversation or were you being invited?**

13 **A. No, I was always invited.**

14 **Q. They were interested in talking to you?**

15 **A. Yes.**

16 **Q. And you mentioned model translation, were they also**

17 **interested in other FICO products at that time as add-ons to**

18 **Blaze Advisor?**

19 **A. So they were interested in add-ons to Blaze Advisor not**

20 **just in model translator but the model governance solution**

21 **that we had, which is a how do I manage all of my different**

22 **models? Because think -- you know, these insurance**

23 **companies have thousands of these analytic models and, you**

24 **know, hundreds of people that need to manage it. And the**

25 **conversations were around how do we use model translator to**

1 bring it into Blaze Advisor and what the best practices

2 of -- once it's in Blaze Advisor, how do we actually govern

3 that model and monitor the performance of that model over

4 time? And various times it would be roadmap conversations

5 as well. So what is FICO doing? How are you guys sort of

6 progressing products, things like that.

7 **Q. They want to look forward to where FICO is going?**

8 **A. Absolutely.**

9 **Q. Were there any discussions that you were involved in**

10 **where the conversation was about FICO's cloud platform for**

11 **Blaze Advisor?**

12 **A. Yes.**

13 **Q. And what were they? And first give us a time frame, if**

14 **you would, if you can recall? I'm asking late 2015, early**

15 **2016?**

16 **A. Well, I think it would have been, it was definitely**

17 **cold, so it would have been, yeah, around 2016 in the cold.**

18 **Q. Okay.**

19 **A. And it was -- you know, they were beginning the thought**

20 **process around moving to cloud. Again, cloud technology was**

21 **very new at the time, so there was a lot of trepidation**

22 **around the cloud as a principle in itself. And then, you**

23 **know, what value would our cloud offering of Blaze Advisor**

24 **provide them in those situations.**

25 **Q. And we should now back up a little bit for all of us to**

1 understand what do you mean by "cloud" and, you know, what

2 is this?

3 **A. What's the easiest description of cloud? The easiest**

4 **description of cloud is traditionally large organizations**

5 **would manage all of their IT infrastructure, all the**

6 **thousands of computers that they run to be able to do**

7 **things. The cloud is a central provider through Internet**

8 **technology does all of that for them.**

9 **Q. Is it fair to say, in other words, in theory, all of the**

10 **IT staff of Chubb & Son becomes redundant because the IT is**

11 **put in the cloud and some other provider is doing that**

12 **work -- the work that was formerly done by in-house staff?**

13 **A. That is certainly one aspect. There certainly is a**

14 **redundancy of staff that occurs in that but really it allows**

15 **them to focus on more important strategic things and be more**

16 **transformative across the organization as opposed to just**

17 **keeping the lights on on old technology.**

18 **Q. So the cloud service provider is providing a lot of the**

19 **technology to keep the software running in the cloud?**

20 **A. Yes.**

21 **Q. But as -- as you said, those are just beginning**

22 **exploratory discussions at that point?**

23 **A. Yeah. So at that time it was the beginning of our cloud**

24 **offering, so these were partnership-based conversations**

25 **around here's where we're thinking of going, where are you**

1 guys thinking of going? How does this sort of gel together?

2 **Q. And today is that called the FICO platform, your cloud**

3 **offering?**

4 **A. That is called FICO platform, yes.**

5 **Q. When you were meeting with these folks, were there any**

6 **conversations that came up about the fact that ACE had or**

7 **will be acquiring the Chubb Corporation?**

8 **A. There were --**

9 MS. GODESKY: Your Honor, may we have a sidebar?

10 THE COURT: You may. Approach.

11 MS. GODESKY: Thank you.

12 THE COURT: Remind the members of the jury, while

13 we're doing this, feel freely to stand up, stretch your

14 legs.

15 (Sidebar discussion.)

16 MS. GODESKY: Your Honor, this goes to the Rule

17 408 issue that we've been discussing. We submitted a

18 supplemental submission on this yesterday, and we have an

19 excerpt that's quoted in our submission from Mr. Baseman's

20 deposition where when he was questioned about these early

21 2016 meetings, Ms. Kliebenstein, Mr. Hinderaker's partner,

22 asserted that Rule 408 privilege should apply to all of

23 these conversations that were happening in early 2016

24 because they were set up for the express purpose of

25 settlement negotiations. It is in black and white in the

1 **A. Yes.**
2 **Q.** And that's a general statement, right, Mr. Baseman? You
3 have not done anything in the course of your work at FICO to
4 specifically analyze the extent to which Blaze reduced time
5 at Chubb?
6 **A. Correct.**
7 **Q.** And then your third bullet says, new applications can be
8 developed and changes to existing applications can be made
9 faster than was possible before Blaze, right?
10 **A. Yes.**
11 **Q.** But you haven't analyzed and you don't have any
12 information from the course of your work at FICO that allows
13 you to say whether it's true that new applications were
14 developed faster at Chubb because of Blaze, correct?
15 **A. Not so. So we do have customers that continue**
16 **relationships with FICO, which they talk about how much**
17 **value that they've received and we have those kind of**
18 **conversations.**
19 **Q.** But specifically at Chubb, you cannot identify a
20 particular application that was developed faster at Chubb
21 because of Blaze?
22 **A. Only through heuristic conversations, yes.**
23 **Q.** And you also can't measure or talk about how quickly
24 Chubb was able to make changes to its internal computer
25 applications because of Blaze. You haven't measured that,

1 right?
2 **A. Of their existing ones?**
3 **Q.** Correct.
4 **A. Correct.**
5 **Q.** Your fourth bullet says, each insurance policy requires
6 a unique set of rule statements for deciding on whether to
7 offer an applicant a policy and at what price, right?
8 **A. Yes.**
9 **Q.** But just to be clear, you have not studied the specific
10 policies that Chubb offers and figured out exactly which
11 rules were being run against which lines of business?
12 **A. No.**
13 **Q.** Your fifth bullet is Blaze enhances business agility
14 because rule statement changes can be made quickly, correct?
15 **A. Yes.**
16 **Q.** But you didn't get any information in the course of your
17 work at FICO in terms of how quickly Chubb was implementing
18 rule changes, right?
19 **A. Not necessarily, no. So in the -- can I elaborate?**
20 **Q.** Not necessarily, no, is good for now. Thank you.
21 And you also don't have any specific information
22 on whether they actually did implement rule changes at
23 various points in time, correct?
24 **A. No. They certainly did make various rule changes, yes.**
25 **Q.** Can you specifically identify rule changes that were

1 made and whether they were made faster at particular points
2 in time because of Blaze?
3 **A. Only heuristically, yes.**
4 **Q.** Your sixth bullet talks about rule statements for
5 decision can be changed faster, new insurance products can
6 be brought to market faster, each product being a unique set
7 of rule statements, right?
8 **A. Correct.**
9 **Q.** Can you specifically identify any insurance product that
10 Chubb was able to bring to market faster because of Blaze?
11 **A. No.**
12 **Q.** And based on all of this, Mr. Baseman, you are not in a
13 position to say whether Blaze had any specific impact at all
14 on Chubb's revenue or profit, correct?
15 **A. Mathematically, no.**
16 **Q.** Okay. So I want to talk about briefly what goes into
17 removing Blaze from a computer application. If a large
18 company has integrated Blaze into multiple applications, it
19 can be complex to remove the software, correct?
20 **A. Potentially.**
21 **Q.** And it could take days, months or even years to unravel
22 from internal systems, correct?
23 **A. To unravel -- potentially.**
24 **Q.** And you're saying potential because there's no typical
25 length of time. It's going to depend on the nature of the

1 company, right?
2 **A. It would be dependent on the nature of how the**
3 **integration was done, what their software development life**
4 **cycles were, yes.**
5 MS. GODESKY: I'm almost done, Your Honor, if I --
6 THE COURT: That's fine.
7 BY MS. GODESKY:
8 **Q.** Now, the amount of time you spent working on Blaze has
9 shifted over time, correct?
10 **A. Yes.**
11 **Q.** And it has declined in recent years, fair?
12 **A. Yes.**
13 **Q.** In 2016, you were spending about 80 percent of your time
14 on Blaze, right?
15 **A. 2016? Yes.**
16 **Q.** By 2021, when you'd provided deposition testimony in
17 this case, you were only spending about 10 percent of your
18 time on Blaze?
19 **A. Correct.**
20 **Q.** And that's because there was the introduction of this
21 new FICO product called Decision Modeler, the cloud-based
22 product, right?
23 **A. Partially, yes.**
24 **Q.** And for the most part, Decision Modeler, the cloud-based
25 product, and Blaze do the same things?

1 **A. There are similarities.**
2 **Q.** And just so everyone understands, this is a little
3 technical, right, but Blaze is an on-premises program,
4 right? It's not in the cloud.
5 **A. Correct.**
6 **Q.** And today most FICO customers are embracing cloud-based
7 technologies, right?
8 **A. Most, yes.**
9 **Q.** And since customers are focussed on the cloud-based
10 offerings, that's also where FICO has been focusing in
11 recent years?
12 **A. Yes.**
13 **Q.** The percentage of FICO's software revenue that is
14 attributable to Blaze has been decreasing in recent years,
15 correct?
16 **A. I'd say that's fair.**
17 **Q.** And most of the company's decision management revenue
18 now comes from that cloud-based FICO platform?
19 **A. Yes.**
20 **Q.** FICO still sells Blaze to some customers, but you've
21 said that it's better suited for small companies and
22 companies in places like Turkey and Latin America that are
23 not yet incorporating the cloud, correct?
24 **A. At that time, that was -- yes, that's what I said.**
25 **Q.** Okay. And as of 2021, when you were deposed in this

1 case, the number of Blaze customers was not increasing,
2 correct?
3 **A. At that time, correct.**
4 **Q.** Okay.
5 MS. GODESKY: Thank you. I have no further
6 questions.
7 THE COURT: All right. We'll take our afternoon
8 break. We'll plan to be back in the courtroom at 25 minutes
9 to 4:00, okay? Thank you.
10 (Jury leaves courtroom.)
11 (WITHOUT JURY PRESENT)
12 THE COURT: Mr. Hinderaker, any update on sort of
13 a time relative to Mr. Baer and some of the exhibits?
14 MR. HINDERAKER: Your Honor, I think that -- I
15 have a short redirect, but my best estimate is that -- I
16 think Mr. Marce will be our last witness today, so we won't
17 be getting to -- if we got to Mr. Baer, there would be ten
18 minutes left in the day, that sort of thing.
19 THE COURT: That's very helpful. Thank you. All
20 right. We'll be in recess until -- yes, Mr. Godesky,
21 Mr. Fleming?
22 MR. FLEMING: We've submitted a letter response to
23 FICO's arguments concerning the issues we discussed earlier
24 today.
25 THE COURT: Okay. I'll certainly look at that as

1 well.
2 MS. GODESKY: I just had a question. Does Your
3 Honor have a rule with regard to speaking to witnesses when
4 they're testifying? May we speak to witnesses when they're
5 on direct but not on cross? Are there any guardrails that
6 we both should be following?
7 THE COURT: I think the rule, right, referencing
8 the sequestration rule is once the witness is in the
9 stand --
10 MS. GODESKY: No discussion.
11 THE COURT: -- no discussion.
12 MS. GODESKY: Thank you.
13 THE COURT: Thank you. We're in recess until 25
14 minutes to 4:00.
15 (Recess taken at 3:20 p.m.)
16 IN OPEN COURT
17 (Jury seated)
18 THE COURT: Mr. Hinderaker, any redirect?
19 MR. HINDERAKER: Yes, Your Honor.
20 THE COURT: And Mr. Baseman, once again, remember
21 you're under oath.
22 THE WITNESS: Yes.
23 MR. HINDERAKER: And remember to be slow in your
24 speech.
25 THE WITNESS: That I will try.

1 **REDIRECT EXAMINATION**
2 BY MR. HINDERAKER:
3 **Q.** A few follow-up questions.
4 **A. Yes, sir.**
5 **Q.** Do you have any responsibility for the pricing of Blaze
6 Advisor licenses?
7 **A. No.**
8 **Q.** Is that the responsibility primarily of Mr. Bill Waid?
9 **A. Among others, yes.**
10 **Q.** When you were asked the question about a customer with
11 two applications considering -- having -- using Blaze
12 Advisor for more applications --
13 **A. Yes.**
14 **Q.** -- and the wisdom of moving to an enterprise-based
15 license --
16 **A. Yes.**
17 **Q.** -- were you assuming that -- did you give your answer in
18 the -- under the assumption of an ongoing business
19 relationship?
20 **A. Yes.**
21 **Q.** Have you ever had experience in setting Blaze Advisor
22 pricing in the context where the relationship had ended and
23 a transition license was being negotiated?
24 **A. No.**
25 MR. HINDERAKER: Could we put slide 4 back up? Is

1 that yours?

2 MS. GODESKY: It's Heather's.

3 BY MR. HINDERAKER:

4 Q. I'm sorry, on slide 4, do you have to be able to

5 monetize -- in your judgment, do you have to be able to

6 monetize the value of Blaze Advisor to know whether it's

7 valuable or not?

8 A. No.

9 Q. And in some answers to questions that you were asked,

10 you used -- used the phrase, heuristically or heuristic

11 conversations or only heuristically.

12 A. Yes.

13 Q. What did that mean?

14 A. Casual, inference-based, based off of the context of

15 what we were talking about. So you're able to deduce what

16 it was that they're talking about in the context of what

17 we're there to talk about.

18 Q. And what did you assume, understand, deduce, regarding

19 the value that Chubb was realizing from Blaze Advisor from

20 these conversations?

21 A. So how you're able to deduce that the Blaze Advisor

22 component is integral to the decision process is the

23 conversations that we were there to discuss around taking

24 pivotal analytic models and putting them into Blaze Advisor

25 was to get a wider use of those models across all of the

1 different systems they were using. They wouldn't have had

2 that conversation if it wasn't being used.

3 Q. A related question. Do you have to know that one thing

4 is -- do you have to know the extent that one thing is

5 faster than another to know that it's faster?

6 A. No.

7 Q. Does the fact that you were not measuring, quantifying,

8 the significance of Blaze Advisor, change your testimony

9 about slide 4 with respect to Blaze Advisor's value to the

10 business?

11 A. Not at all.

12 Q. And at the close, you were asked about information that

13 you gave in 2021 regarding Blaze Advisor sales. Do you have

14 any knowledge about the amount of success or lack of -- any

15 knowledge about Blaze Advisor sales today, the quantity, the

16 amount, the success?

17 A. Not from numbers but trajectory, yes.

18 Q. What's the trajectory?

19 A. The trajectory is it continues to sell and is, in fact,

20 picking up in Latin America and especially regions that we

21 do not have the cloud. So it is still a very viable product

22 of which customers still use.

23 MR. HINDERAKER: Thank you.

24 No further questions, Your Honor.

25 THE COURT: Thank you, Mr. Hinderaker.

1 Ms. Godesky, any re-cross?

2 MS. GODESKY: Nothing further, thank you.

3 THE COURT: All right. Thank you. Go ahead,

4 Mr. Baseman, you may step down.

5 THE WITNESS: Thank you, Your Honor.

6 THE COURT: Mr. Hinderaker, or whomever, go ahead

7 and call your next witness.

8 MS. KLIEBENSTEIN: Thank you, Your Honor. We call

9 Mr. Jean-Luc Marce.

10 Your Honor, may I approach?

11 THE COURT: You may.

12 Come on up here, Mr. Marce. Good afternoon. If

13 you would raise your right hand, please.

14 JEAN-LUC MARCE,

15 duly sworn, was examined and testified as follows:

16

17 THE COURT: Go ahead and be seated. Make sure to

18 speak into the microphone and state your full name for the

19 record, please.

20 THE WITNESS: My name is Jean-Luc Marce,

21 M-A-R-C-E.

22 DIRECT EXAMINATION

23 BY MS. KLIEBENSTEIN:

24 Q. Mr. Marce, is the microphone at a comfortable spot for

25 you?

1 A. It is now.

2 Q. Thank you very much. And I have not met everyone yet.

3 My name is Heather Kliebenstein. I'm at Merchant & Gould as

4 well.

5 Mr. Marce, can you identify your current employer

6 and job title for us?

7 A. I'm a VP of software engineering at FICO.

8 Q. And how long have you worked at FICO?

9 A. Since 2002, so about 20 years.

10 Q. And today what are your primary job duties?

11 A. Today I lead a software development team responsible for

12 developing and mentoring and supporting decision technology

13 software at FICO. And I'm also leading architect for the

14 software products.

15 Q. And do you work with any particular software product

16 today at FICO?

17 A. I'm particularly focusing on Blaze Advisor.

18 Q. And can you tell the jury, in your words, what is Blaze

19 Advisor?

20 A. So Blaze Advisor is what we call a business rule

21 management system, which companies use to automate

22 decisions, automate processes and procedures they may have.

23 It helps them do that in a more efficient way and in a more

24 consistent way.

25 Q. For someone who doesn't work in IT and software

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1 without software like this, wouldn't often have insights
 2 into the day-to-day process that somebody who might be
 3 reviewing applications would be using. So the ability to
 4 document and codify these business rules or business process
 5 gives everybody access to the process, they get to see it,
 6 they get to modify it, they get to vet it, determine if
 7 that's within their business practice.
 8 Q. That's an example of the control benefit we discussed
 9 earlier?
 10 A. Correct.
 11 Q. Looking at the final bullet there, choosing the optimal
 12 strategy by running "what if" analyses, what does that mean?
 13 A. So one of the benefits distinctly in the software is
 14 once I've identified all of this process, I can take that
 15 process and change it, and I can change it in a sandbox, so
 16 to speak, so it's not impacting direct customers, but I can
 17 see what changes and modifications, maybe changes to the
 18 analytics, changes to the data, changes to the offering
 19 would have on my profitability. So I can run the process,
 20 if you will, in silo, make those modifications and then
 21 compare and contrast it to the process I'm currently using
 22 and see if there's benefit to making those changes.
 23 Q. So out of those list of benefits we discussed earlier,
 24 what would that be an example of?
 25 A. I can't remember the list. I think it was transparency.

1 empowers the decision-making process.
 2 Q. And when you say "the software," Mr. Baer, what are you
 3 referring to specifically?
 4 A. The business rules management system.
 5 Q. And is that Blaze Advisor?
 6 A. Blaze Advisor.
 7 Q. I think this document refers also to Decision Management
 8 Suite; is that correct?
 9 A. Yes. So Decision Management Suite is an evolution of
 10 our software to move it to the cloud, so there's a product
 11 within the Decision Management Suite referred to as decision
 12 modeler, which is Blaze Advisor in the cloud.
 13 Q. Okay. I would like you to turn to Exhibit 1174 in your
 14 binder. Do you recognize this document, Mr. Baer?
 15 A. I do.
 16 Q. And what is it?
 17 A. This is an internal sales enablement sheet. This is a
 18 document that we produce for sales so that they understand
 19 what they're selling and who they're selling it to.
 20 Q. And is this document created and kept in the ordinary
 21 course of FICO's marketing business?
 22 A. Correct, it is.
 23 Q. And is it FICO's regular practice to produce sales
 24 sheets such as this?
 25 A. Yes.

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1 Yes.
 2 Q. Okay. Would you turn to the next page, Mr. Baer,
 3 page 2? On the right-hand column in the lower right-hand
 4 corner a list of bullets, what is shown there?
 5 A. These are also improvements that underwriters should
 6 expect to see by enabling this process.
 7 Q. And can you walk through that list of bullets?
 8 A. Better identify risk and improve strategies to prevent
 9 losses, transition from static to dynamic, variable-based
 10 pricing models, more finely and accurately segment
 11 customers, and view policyholder relationships as a whole to
 12 optimize treatments.
 13 Q. And can you turn to page 3, Mr. Baer. Starting on the
 14 second column at the bottom and on to the third column,
 15 there's a list of bolded headings. What are those?
 16 A. These are capabilities within the software.
 17 Q. And can you walk through those capabilities?
 18 A. Ingest, synthesize, sense and respond to data of any
 19 size in real time.
 20 Q. And so what does that mean in layman's terms?
 21 A. That the software allows you to integrate data sets.
 22 They could be, you know, what we call streaming, they happen
 23 in real time, or they could be a big database that you
 24 already have. And the ability of the software to ingest any
 25 of that data, regardless of where it comes from, I think

1 MR. ERBELE: Your Honor, I would move Exhibit 1174
 2 into evidence.
 3 MR. FLEMING: No objection.
 4 THE COURT: 1174 is received.
 5 BY MR. ERBELE
 6 Q. And so who receives this document, Mr. Baer?
 7 A. Only sales. This is an internal sales document.
 8 Q. So this is FICO's salespeople?
 9 A. Correct.
 10 Q. And at the top it says repeatable solution: Insurance
 11 underwriting. So are these FICO's salespeople involved in
 12 selling FICO products to the insurance industry?
 13 A. That is correct.
 14 Q. And which FICO products would be at issue here?
 15 A. Any product that addresses some of the concerns that
 16 insurers might have in underwriting, including Blaze
 17 Advisor. It could include express optimization, as well as
 18 analytic modeler or other products within the Decision
 19 Management Suite.
 20 Q. So looking at the right-hand column there entitled
 21 Benefits, what is shown in that column?
 22 A. These are benefits that insurers, that clients who use
 23 the Decision Management Suite would -- could achieve based
 24 on our customer feedback.
 25 Q. And why is benefits included in the sales document?

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1 relationship and was there a license opportunity? Yes,
 2 there was, but more important to us was that the long-term
 3 relationship, the 3 million would have come and went, but I
 4 had Chubb as a customer a decade and now a lawsuit? Come
 5 on.
 6 He's responding to his reaction and his time frame
 7 of Exhibit 94, which is before the tenor turned to
 8 settlement.
 9 In Defense Counsel's letter to the Court of the
 10 15th, at the end of the initial notice period, combined with
 11 temporary forbearance of action made clear that the dispute
 12 had crystallized, the litigation was on the table. That is
 13 after these events. Counsel has taken the position that
 14 it's after these events. Counsel has taken the position
 15 that FICO has with Schreiber and Sawyer sought to have a
 16 licensing opportunity to grab money, but this testimony is
 17 necessary to fill in the rest of the story so that the jury
 18 hears the rest of the story and enable Schreiber to say it
 19 wasn't the money as much as the relationship that I was
 20 trying to have as my top concern. So this is -- none of
 21 this is within Rule 408, Your Honor.
 22 THE COURT: All right. Very well. Counsel for
 23 Federal?
 24 MS. GODESKY: Your Honor, our objection to these
 25 two excerpts at 310 and 343 are that they are nonresponsive,

1 Just do it on your -- all right.
 2 MR. HINDERAKER: Your Honor, for housekeeping?
 3 THE COURT: Yes.
 4 MR. HINDERAKER: The video will run about 2 hours
 5 and 11 minutes.
 6 THE COURT: Okay. So you want to tell us when you
 7 want us to stop or if you have an idea when we should stop,
 8 Mr. Mayleben will just be here and available. Right around
 9 noon, if there's a natural break.
 10 MR. HINDERAKER: Yes. And then we spoke at one of
 11 the pretrials about being able to give a brief introduction
 12 of who this witness is to the jury before it starts. We've
 13 exchanged what I expect -- what I will say and it's
 14 agreeable so if you give me a moment to do that.
 15 THE COURT: Absolutely. Thank you.
 16 (Jury in.)
 17
 18 (IN OPEN COURT)
 19 THE COURT: Mr. Hinderaker.
 20 MR. HINDERAKER: The next witness that will be
 21 called in our case, FICO's case, is a gentleman by the name
 22 of Russell Schreiber. I think you should appreciate that we
 23 will be playing all of the video of Mr. Schreiber's
 24 testimony that which is offered by FICO and that which is
 25 offered by the defendants. It will just be his whole

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1 argumentative narratives from a witness. He wouldn't be
 2 allowed to give that kind of nonresponsive speech in court,
 3 and the fact that these are deposition videos with no
 4 opportunity for even a recross makes it even more
 5 prejudicial than it would be if he did that here live.
 6 MR. HINDERAKER: If I can?
 7 THE COURT: Go ahead, Mr. Hinderaker.
 8 MR. HINDERAKER: Just commenting that now the
 9 basis for the objection has changed from what it was this
 10 morning, and this is the examination of defense counsel at
 11 the time, and I don't have a transcript to get the full
 12 context, but those were the answers that he was given to the
 13 questions and there wasn't any effort made at the time of
 14 the deposition to reserve any objection.
 15 THE COURT: Agreed, Mr. Hinderaker. I do find
 16 that these bits of testimony are admissible, that any
 17 objection to the nonresponsive nature of the answer, if it
 18 is nonresponsive have been waived, and the e-mail, which is
 19 Exhibit 133, is also admissible.
 20 All right. We have exactly six minutes everyone.
 21 See you back here.
 22 (Recess at 10:31 a.m. till 10:39 a.m.)
 23 (IN OPEN COURT)
 24 THE COURT: This is up like the old days, we don't
 25 have to roll up a television screen or anything, right?

1 presentation. And I'm just going to introduce Mr. Schreiber
 2 to you.
 3 Mr. Schreiber is a former FICO employee. He now
 4 lives in New York where his deposition was taken on
 5 October 24, 2018.
 6 He was in sales, and when he left FICO his title
 7 was Vice President of Health Care and Insurance, and he was
 8 with FICO from 2006 to 2016. Thank you.
 9 THE COURT: Very well. Thank you, Mr. Hinderaker.
 10 RUSSELL SCHREIBER,
 11 Whereupon, having been duly sworn upon his oath, testified
 12 as follows:
 13
 14 (Whereupon, Deposition of RUSSELL SCHREIBER is
 15 played, as follows:)
 16 EXAMINATION
 17 BY MS. JANUS:
 18 A. Russell Schreiber.
 19 Q. What is your work address?
 20 A. I work from home. I'm self-employed, semi-retired.
 21 Q. What is your home address?
 22 A. It's 180 East End Avenue, New York, New York 10128.
 23 Q. What is your current employment?
 24 A. Self-employed. Investor and self-employed. Business
 25 owner. Multiple irons in the fire.

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1 Q. What type of work do you do as a business owner?

2 A. So I have real estate properties, and I've got a small

3 tool handling business that I've got a 20-million-a-year

4 business, a material handling business that I'm an investor

5 in.

6 Q. For those who aren't in that line of business, what is

7 material handling?

8 A. Oh, warehouse. Forklifts is probably the easiest way.

9 So forklifts, yeah.

10 Q. And is your work in New York?

11 A. Yes.

12 Q. Prior to being self-employed, what was your employment?

13 A. At that time I was with FICO.

14 Q. Okay. And what were the years of your employment with

15 FICO?

16 A. It was 2006 through 2016. And I had a four or six

17 month -- I forgot now -- hiatus where I left FICO and I came

18 back. So that was in the pre-2010 window somewhere.

19 Q. Somewhere in 2009 or?

20 A. Maybe '7 or '8, but it was just for a short period of

21 time, say four to six months, as they say. I left and they

22 sucked me back in.

23 Q. Other than that four to six month hiatus, you were

24 employed at FICO from 2006 to 2016 continuously?

25 A. That's correct.

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1 Q. And what were your positions at FICO?

2 A. So I joined FICO with responsibility for the northeast

3 insurance market. And from -- and then over time, I moved

4 to be responsible for the United States insurance market.

5 I have to give some thought if you want to know

6 the years, but -- and then from the north -- from the U.S.

7 insurance market, I moved to the global insurance market

8 lead. And then after that I took on I added to that the

9 U.S. health care lead. So I was global insurance, U.S.

10 health care, then ultimately I had global remit for

11 insurance and health care markets.

12 Q. Global remit?

13 A. Right, responsibility.

14 Q. Oh, okay.

15 A. So my title I think at the end was -- that's great, with

16 the insuring markets -- but I was vice president of health

17 care and insurance, global vice president or something like

18 that.

19 Q. So let's try to, exact dates aren't crucial but just put

20 rough times on those positions. You started with, you said

21 you were responsible for the northeast insurance market?

22 A. Right. So that's January of '06. And then I left in

23 around late '07. Right. So say I came back mid-'08, and at

24 that point mid-'08 forward, I had the U.S. insurance market.

25 That was about two years. Then I had the global insurance

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1 market. And then the U.S. health care was kind of a very

2 short shift until global health care, so say by 2013, '14, I

3 had all of the insurance in North America markets.

4 Q. So from 2010 to the end of your employment there, you

5 were responsible for the global insurance market. It's just

6 --

7 A. A piece of it.

8 Q. -- at some point in time there was health care added in?

9 A. February, roughly.

10 Q. All right. And so first I want to just understand what

11 you mean by responsible for a given insurance market, so we

12 can start with when you were responsible for the northeast

13 insurance market, what does that mean at FICO?

14 A. Right. So that means revenue. Revenue, r-e-v, okay,

15 revenue. So that means that includes new business, customer

16 retention of old business, customer satisfaction.

17 Basically, you let out a revenue plan, put together a

18 revenue plan, and then how do you achieve that. It's

19 through sales and service.

20 Q. Well, FICO sells software?

21 A. Right.

22 Q. That's a source of revenue generation for FICO, that

23 might be one area of revenue generation that would apply the

24 to the insurance market?

25 A. Right.

314

1 Q. Is that fair?

2 A. So there's software and services, yes. So software is

3 multiple lines, and software -- the services have multiple

4 lines, yes.

5 Q. And "services," you mean professional services?

6 A. Right.

7 Q. Okay. So when you started, you were in charge of the

8 northeast insurance market. And you've described that to

9 mean essentially you were responsible for the revenues that

10 FICO realized from the northeast insurance market. In terms

11 of your actual job duties, what did that look like,

12 generally?

13 A. So it was planning how do we achieve revenue goals;

14 work -- work back and forth with the leadership at that time

15 to set a goal and then see how we can fit into it based on

16 the tools that we had. It would be working with various

17 sales teams. Like I know we're here to talk about Blaze, so

18 Blaze had a sales team. There were other products and other

19 sales team.

20 So I'd work with all those teams to see what we're

21 going to bring to a customer or to a territory. We'd set up

22 road shows. We'd have marketing events where a hotel room

23 would 80 people invited in and tell our story.

24 Q. Were you also in a role of client partner at times?

25 A. Yes. Yes.

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1 do a transitional thing, we're going to bury an ELA that we
2 sold to a \$12 billion company into a \$35 billion company,
3 and we knew that they lost track of use. This is the use
4 signatory they gave us that day, but we knew there was other
5 stuff out there. We didn't know what it was, but we knew
6 there had to be. It's been there a decade.

7 There's a lot more defining of what scope would
8 have been needed to be -- and it would have been a
9 transition. We would have had to do some sort of transitory
10 thing, I think, but I don't know. Of course, we never got
11 to that point.

12 Q. Well, that's confusing to me because you keep saying
13 that despite the timing, which of course FICO knew about the
14 transaction for seven months before bringing it up with
15 Chubb, but --

16 A. Chubb knew about it too. Chubb knew about it before
17 seven months.

18 Q. Take a look at Exhibit Number 95 previously marked.

19 A. So February 26th. Okay.

20 Q. So Tamra sent her proposal, which is marked as
21 Exhibit 94, on February 25th at 2:06 p.m. Eastern, correct?

22 A. I'm sorry. Which was -- so Tamra, to 9:50. Tamra said
23 something, 12:30. I don't see 2:06 Eastern.

24 Q. Exhibit 94 --

25 A. The previous one.

1 Q. So if Tamra had made that proposal that's marked as 94
2 prior to the close of the ACE merger, would you have just
3 negotiated about that proposal and taken out the provision
4 relating to a right to change applications?

5 A. This is what it boils down to to me: If someone would
6 have engaged us when we tried to engage or before we tried
7 to engage, we would have found a way to let them transition
8 in a way that would have had a -- maintained a really great
9 working relationship. Loved the client, wanted to maintain
10 a reference. Really wasn't looking to do anything other
11 than figure how do we stay whole and continue the
12 relationship.

13 And was there a license opportunity? Yes, there
14 was. But more important to us was that long-term client
15 relationship. The \$3 million would have come and went. I
16 had Chubb as a customer for a decade, and now a lawsuit?
17 Come on.

18 Q. You knew about use of Blaze in at least the UK prior
19 to --

20 A. I knew of one, yeah.

21 Q. But you knew about uses in the UK prior to Tom Carretta
22 starting to write letters on this dispute, correct?

23 A. Whether that's true or not doesn't -- it's still
24 unauthorized, non-compliant. Noncompliance versus Russ
25 said, oh, yeah, that's global. That's different than being

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1 Q. -- Tamra sent her email with the proposal on February
2 25th --

3 A. Right, to Mike and I, yes.

4 Q. -- at 2:06 Eastern, right?

5 A. That's right.

6 Q. Okay. And then Tom Carretta responded to Chubb's
7 counsel at 9:50 the next morning, correct?

8 A. Right.

9 Q. And Tom Carretta's response was, "Thank you for the
10 email. The proposal was not acceptable from our business
11 and compliance teams, and I confirm it as rejected."

12 A. Okay.

13 Q. Do you see that?

14 A. I see that.

15 Q. Okay. And then he says that his business teams will
16 meet and presumably propose a solution from FICO, correct?

17 A. Right.

18 Q. So this confirms that at least at this point -- first of
19 all, very quick response on the proposal?

20 A. Yes.

21 Q. You did not want to negotiate the proposal that Tamra
22 sent in Exhibit 94, right?

23 A. Not a proposal so broken that there was nothing to
24 negotiate from. It's not that I didn't want to. I needed a
25 proposal that was responsive.

1 compliant, right?

2 Q. And do you think that they were unauthorized uses even
3 if FICO said to Chubb, you're up; yes, you can use Blaze in
4 you're -- under the Chubb ELA?

5 A. Yeah. Oh, sorry.

6 MS. JANUS: Those are all the questions I have.
7 Thank you.

8 MR. HINDERAKER: I just have a few. Would you
9 mark that as -- let me grab some more copies here -- 143.
10 And then would you mark -- would you mark this as the next
11 one, please.

EXAMINATION

12 BY MR. HINDERAKER:

13 Q. First, with respect to Exhibit 143, can you identify
14 this for us?

15 A. This is, "Hello. Welcome to FICO. Welcome to Chubb."

16 This is the actual document that kicked off this
17 whole journey that we've been talking about.

18 Q. Okay. At the very beginning of the deposition, you were
19 asked about an RFI. At a certain point in time, there was a
20 question of whether it was an RFI or RFP. But you were
21 asked about the document from Chubb against which FICO
22 fashioned its original solution.

23 Is this that document?

24 A. This looks to be that document, yes.

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1 because that's after your time at FICO, right?

2 A. Correct.

3 Q. Okay. So let's look at the third sentence of this

4 provision. It says, [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 Do you see this?

15 A. Yes.

16 Q. So this assignment provision in the [REDACTED] contract

17 does have a specific reference to revenue, right?

18 A. It has a specific reference to the entity's

19 transactions, yes, which could be translated into revenue

20 ultimately, yes.

21 Q. And revenue, right, because in sub (1) it says if the

22 annual gross revenues of the surviving entity exceed prior

23 revenue by [REDACTED], right?

24 A. Yes.

25 Q. And it doesn't say that FICO will definitely get more

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1 fees even if revenue has gone up by [REDACTED] and the

2 customer is using Blaze to process more transactions, right?

3 A. It is not a definitive that they would collect

4 additional fees, correct.

5 Q. It just says that FICO and [REDACTED] agree to negotiate

6 in good faith about additional fees, if any, right?

7 A. Correct.

8 Q. And this type of language did not appear in Section 10.8

9 of the Chubb agreement, correct?

10 A. No, it did not.

11 Q. And just like the first sentence of this agreement,

12 there is no record of you trying to add this to the Chubb

13 agreement either, correct?

14 A. No, but to me one of the key differences is this

15 agreement is actually with a company versus a division. So

16 I think there would be different ways of approaching it.

17 Q. And you don't know if you had tried to add this

18 agreement whether Mr. Black at Chubb would have agreed to

19 it, correct?

20 A. No.

21 MS. GODESKY: Thank you. I have no further

22 questions.

23 THE COURT: Thank you, Ms. Godesky.

24 Mr. Hinderaker, redirect?

25 MR. HINDERAKER: Yes. Thank you.

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1 REDIRECT EXAMINATION

2 BY MR. HINDERAKER:

3 Q. Good morning.

4 A. Good morning.

5 Q. In your experience at FICO supporting the business side,

6 were license agreements individually negotiated by FICO to

7 the client?

8 A. Yes.

9 Q. And then you received the business terms from the

10 negotiations that happened between the business people

11 representing FICO and the business people representing the

12 client.

13 A. Correct.

14 Q. So in that context, each license agreement is unique per

15 the negotiations between the parties; is that fair?

16 A. That's fair, yes.

17 Q. With respect to the license agreement that is with

18 Chubb & Son, the division of Federal, do we agree that

19 that's J1 in your binder?

20 A. Yes.

21 MR. HINDERAKER: Thank you. I have no further

22 questions, Your Honor.

23 THE COURT: Any recross, Ms. Godesky?

24 MS. GODESKY: No thank you, Your Honor.

25 THE COURT: Very well. Ms. Boone, you are

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1 excused. Thank you.

2 THE WITNESS: Thank you.

3 (Witness excused.)

4 THE COURT: Mr. Hinderaker, do you know how you

5 wish to proceed?

6 Ms. Kliebenstein?

7 MR. HINDERAKER: Maybe if we could go with

8 Mr. Ivey.

9 THE COURT: Is that what you intend to do?

10 MS. KLIEBENSTEIN: I think he is here.

11 THE COURT: Okay. Come on up, Mr. Ivey. Come on

12 around here. And if you will pause here and raise your

13 right hand, please.

14 (Witness sworn.)

15 THE WITNESS: I do.

16 THE COURT: Go ahead and be seated. State your

17 full name for the record, if you will, and make sure you're

18 speaking into the microphone.

19 THE WITNESS: Christopher Patrick Ivey.

20 (CHRISTOPHER PATRICK IVEY)

21 DIRECT EXAMINATION

22 BY MS. KLIEBENSTEIN:

23 Q. Good morning, Mr. Ivey.

24 A. Good morning.

25 Q. Apologies for the schedule shift. Everyone is trying to

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1 avoid the snow.
 2 A. I appreciate it.
 3 Q. Mr. Ivey, can you tell the jury your current employer
 4 and role?
 5 A. So I'm the vice president of product support at FICO.
 6 Q. And how long have you worked at FICO?
 7 A. Since 2003, so about 20 years.
 8 Q. And how long have you been in the product support group?
 9 A. Since 2014, so nine years.
 10 Q. What does the product support group do at FICO?
 11 A. So the product support group is -- essentially it's a
 12 help desk. So if you were to call in for help on something,
 13 we will help out with the software and the errors that are
 14 occurring.
 15 Q. Could you move a little closer to microphone?
 16 A. Yes.
 17 Q. And your microphone can move, too, if that's easier.
 18 A. Okay. There we go.
 19 Q. Perfect. And before your role in product support, did
 20 you have any other positions at FICO?
 21 A. I did. I was in the professional services group within
 22 FICO.
 23 Q. When did you start in the professional services group?
 24 A. So I started there in 2003 until 2014, so that was about
 25 eleven years.

1 the business logic, implementing it or configuring it within
 2 Blaze Advisor and then get it running. So kind of -- I
 3 guess maybe an analogy would help.
 4 So if you have an iPhone, a brand-new iPhone, and
 5 you, you know, get it home and you unplug it -- sorry -- you
 6 plug it in and you get it started, there is a lot of things
 7 that you would need to configure on the phone. Right? So
 8 what ring tones you want and, you know, all of the -- what
 9 mail you're going to get and all the apps that you want to
 10 download and things like that.
 11 So that's the same way Blaze Advisor is similar to
 12 that. We would take it and work with you to find your
 13 preferences and the logic that you want to put in it, and we
 14 configure it within the system, if that helps.
 15 Q. And when you left the group in 2014 to move into product
 16 support, how many people were on the professional services
 17 team at FICO?
 18 A. We had about 80, 80 resources in the North American
 19 group.
 20 Q. And what activities -- can you identify the activities
 21 in big buckets that the professional services group does
 22 with respect to Blaze Advisor, in particular?
 23 A. So I mentioned before, I would say in the sort of these
 24 three big buckets that we did sort of consulting and then
 25 the configuration, the implementation and really the

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1 Q. And we just talked about what the product support group
 2 does. What does the professional services group do at FICO?
 3 A. So the professional services group at FICO, I sort of
 4 bucket it into three areas. So we provide consulting to our
 5 customers. We provide kind of implementation or
 6 configuration services for Blaze Advisor and for the
 7 software, and then we provide mentoring around the software
 8 as well.
 9 Q. Implementation. What does implementation mean with
 10 respect to the professional services group?
 11 A. So with respect to the professional services group,
 12 implementation would be really getting the software kind of
 13 up and running. So it would be working with the customer to
 14 take Blaze, which when it, when it is delivered from FICO,
 15 it's not really ready to run. You can't just take it and
 16 plug it in and run it. So it's the life cycle of taking
 17 Blaze Advisor, configuring it and getting it up and running
 18 at the customer site.
 19 Q. And so the FICO professional services group people help
 20 perform that function, correct?
 21 A. Correct.
 22 Q. And you just mentioned another software industry buzz
 23 word. Configure. What does "configure" mean?
 24 A. So configuration would be -- it's sort of part of the
 25 broader implementation. So configuration would be taking

1 mentoring of a customer.
 2 Q. And who receives these services? Who are you providing
 3 them to?
 4 A. So our licensed customers would typically ask for and
 5 receive these services.
 6 Q. Let's break down those three buckets and talk about each
 7 of them generally.
 8 A. Okay.
 9 Q. Consulting. What types of consulting did the group
 10 offer to Blaze Advisor customers?
 11 A. So in consulting, we were really bringing our best
 12 practices around the software. So we've obviously
 13 implemented it many, many times with many customers. So our
 14 knowledge around the best ways to take the software to use
 15 it in a performant way, in a way that was -- you were
 16 looking for it to be scaleable and adaptable and agile. So
 17 a lot of those best practices are around those areas. We
 18 provided a lot of that in the consulting aspect of it, how
 19 you would implement a business rules management system
 20 within your company, if you hadn't used one before.
 21 Q. And next bucket, configuration. Can you explain what
 22 are those services with respect to Blaze Advisor?
 23 A. So configuration is really the, the, again, part of the
 24 area where we take the software, we're going to work with
 25 the customer to understand their business logic, and then

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1 the requirements that they wanted, what they wanted this to
 2 look like, we really worked back and forth with how this was
 3 going to implement and work with their system as well.
 4 And then we go into the design of it. So we said,
 5 okay, what would this look like with [REDACTED], do we
 6 have the right data that we need, do we have all the logic,
 7 is it written down, is it in [REDACTED], you know,
 8 where is it. So we gathered a lot of that and put that
 9 together.
 10 And then we worked with them to actually develop
 11 the system, so worked through actually implementing again
 12 the full Blaze Advisor, the full repository, all the rules,
 13 working hand in hand with them and then training them at the
 14 same time and mentoring them. And we deployed that out into
 15 [REDACTED]. And the result was that they actually were then
 16 able to go through really all [REDACTED]
 17 within, you know, hours versus 1,000 with, you know, eight
 18 people sitting around a desk for two weeks. So it was a
 19 huge success story. It was really good.
 20 Q. And how, how do customers get a copy of Blaze Advisor?
 21 A. So we have a fulfillment website where customers
 22 typically would log in and download the software.
 23 Q. And once it's installed, can FICO turn off Blaze Advisor
 24 at its customer site?
 25 A. No, we don't really have an option to do that. The

1 likely take.
 2 Q. Is a statement of work a license?
 3 A. No, a statement of work is not a license. So typically
 4 that would have been negotiated before I got involved. So
 5 the license was -- or, rather, I'll say the professional
 6 services statement of work would be an appendix to the
 7 license.
 8 Q. So it's a totally separate contract, correct?
 9 A. Totally separate contracts, yes.
 10 Q. And did you work on statements of work during your time
 11 at FICO in the professional services group?
 12 A. I did. I did. So I was for a period of time in charge
 13 of, in charge of the Blaze group. So I would help negotiate
 14 and understand what the customer was really looking for and
 15 then write up the statements of work.
 16 Q. And did you work on any of those statements of work
 17 between FICO and Chubb & Son?
 18 A. I did, yes.
 19 Q. Do you know how many, how many of those statements of
 20 work exist between Chubb & Son and FICO?
 21 A. I did a count, and there were I believe 52 statements of
 22 work.
 23 Q. And have you personally reviewed all of those statements
 24 of work?
 25 A. I have.

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1 license is kind of on their premises. There is no way for
 2 us to go in and turn it off. So it's not like a Cloud
 3 account, like Spotify or Netflix or something, where we can
 4 turn it off remotely.
 5 Q. And let's drill down into the fun part, the contracts of
 6 the professional services group. Can you pick up -- you've
 7 got two big binders. Apologies, everyone. Pick up the
 8 first one that starts with P212, in the first exhibit right
 9 here.
 10 A. This one here?
 11 Q. Okay.
 12 A. Oh, yeah. P212. Yes, sir.
 13 Q. When you worked in the professional services group, were
 14 you ever involved in documenting customer engagements?
 15 A. I was. So I -- when I was in the professional services
 16 group, I would document statements of work.
 17 Q. And a statement of work, for someone who is not a lawyer
 18 or who is not in the technical software industry, can you
 19 tell me just at a top level what is a statement of work?
 20 And then we will look at some.
 21 A. Sure. Yeah. So a statement of work really just
 22 describes what a customer has asked us to do for them. It
 23 will run through what we're going to do, kind of the
 24 deliverables that we will provide, and then usually the cost
 25 and the -- excuse me -- and the number of hours that it will

1 Q. Based on your experience, do you recall generally what
 2 type of services Chubb & Son requested from FICO?
 3 A. Yes. So generally it followed a lot of ways I was
 4 talking about earlier, so consulting, so the implementation,
 5 that Four D approach that I talked about, training, there
 6 was a number of trainings in there, and then that
 7 mentorship, mentoring and guidance, yeah.
 8 Q. Please turn to Exhibit 337 in your binder.
 9 MS. KLIEBENSTEIN: AND, Your Honor, to my
 10 knowledge, there is no objection to the exhibits we're going
 11 to go through here.
 12 THE COURT: Were you offering -- it hasn't been
 13 displayed 212. Were you offering 212?
 14 MS. KLIEBENSTEIN: Not yet.
 15 THE COURT: Okay.
 16 MS. KLIEBENSTEIN: Thank you.
 17 BY MS. KLIEBENSTEIN:
 18 Q. So Exhibit 337, do you recognize this exhibit, Mr. Ivey?
 19 A. I do, yes. Yes.
 20 Q. What is it?
 21 A. So this is a statement of work dated the 12th of June,
 22 2006.
 23 Q. And, Mr. Mayleben, could you just show us the first page
 24 there? Thank you.
 25 So this is a statement of work contract. Can you

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1 Once the units -- and I call them units. I call
 2 them building blocks. Once those building blocks are
 3 created, you unit test each of those building blocks, and
 4 then you start to glue those building blocks together to
 5 perform a more fully functional product, which then can be,
 6 again, tested by the users in the form of acceptance testing
 7 or full quality control to make sure that if I run this
 8 business in the as-is state and then I run it again in the
 9 future state, I'm going to get the same results or that I am
 10 going to accept the changes because that was designed that
 11 way.

12 So what I'm saying is, you have to quality control
 13 your product acceptance, and that was conditional, and
 14 anybody that is buying a professional services engagement
 15 has to be able to finally accept the work product
 16 deliverable. And those are steps -- were key steps in the
 17 process.

18 Q. And were you involved in that process with Chubb & Son?

19 A. Yes, I attended the status meeting.

20 Q. Okay. And were you in meetings where either the
 21 business people or the IT people of Chubb commented upon the
 22 performance of the software in that context of the
 23 acceptance testing?

24 A. One of those folks -- and this is told to me by, I
 25 believe, Sully -- was so impressed, he said that I just did

1 to know, but would you just give us a general description of
 2 what this document was intended to say and teach?
 3 A. It was a full, if you will, client journey document here
 4 which described the business need, the intended solution,
 5 how we built the solution, and the results of the
 6 implementation.

7 Q. Okay. And is this fair to say that this summarizes your
 8 firsthand experience in that process of selling to Chubb?

9 A. Certainly.

10 Q. Maybe just a couple more questions about this. If you
 11 go to the page that is 5877 where it says, "Chubb specialty
 12 insurance business" and has the bullet points.

13 A. Yes.

14 Q. What, what was the source of this information that's on
 15 this letter?

16 A. Interestingly, the bullet that talks about 3.5 billion
 17 comes from the RFI from Chubb.

18 Q. Mm-hmm (Yes).

19 A. 1,000 employees comes from the RFI. 100,000 policies
 20 written comes from RFI. And the enterprise-wide premium
 21 revenue comes from the earlier intent -- or I should say a
 22 summary intent to talk about what would have come from the
 23 annual report.

24 Q. Okay. And then on the next page, which is 5878, same
 25 question: What was the source of your understanding of the

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1 in one afternoon myself, utilizing the Blaze Advisor
 2 software, something that would have taken months and
 3 hundreds of thousands of dollars of budget for that same
 4 process to be done by IT. This product implementation has
 5 basically paid for itself on the first time we ran it.

6 Q. And that was from Sully?

7 A. Yes.

8 Q. Okay. And then did any of the business -- did any of
 9 the business people of Chubb & Son comment on how the use of
 10 the product, that is, Blaze Advisor, would be able to assist
 11 them in growing their revenue, moving into the mid-market?

12 A. Only that within the first full year they did succeed in
 13 accepting considerably more business than they had in the
 14 previous year for no increase in staff.

15 Q. This was identified in an earlier deposition as
 16 Exhibit 330, dated November 3, 2006. Placing a time, it's
 17 after the June license agreement. It's after the divisional
 18 and it's before the second amendment.

19 Do you know who prepared Exhibit 330?

20 A. I did.

21 Q. And what was the purposes of Exhibit 330?

22 A. Sales training within FICO.

23 Q. So internal, internal to FICO?

24 A. Yes.

25 Q. Okay. And I think maybe the title tells us what we need

1 Chubb current state?

2 A. Initially, in that first response, it was the RFI, and
 3 it was refined through subsequent weekly conversations with
 4 the technology team headed by Sully.

5 Q. And then on the next page, 5879, you lay out the vision
 6 statement and then you lay out success criteria. Do you
 7 know if the success -- do you know if the success criteria
 8 were met?

9 A. I do know that they automated their renewals --

10 Q. Mm-hmm.

11 A. -- in short order. I do know that from the testimony of
 12 the business people that they did -- they were able to
 13 access and modify the rules; and through the analysis tools
 14 of the Blaze Advisor product, they would be able to know
 15 which rules are the best rules and which rules are the worst
 16 rules and, in effect, modify them accordingly.

17 THE COURT: All right. Members of the Jury, we're
 18 going to take our break now. And I have a matter that I and
 19 the lawyers need to take up during the break, so why don't
 20 you plan to be back in the courtroom at 1:35 on that clock.
 21 Okay?

22 THE CLERK: All rise for the jury.

23 (Jury exits.)

24

25 (In open court without the Jury present.)

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1 context, and in the patent context, which is different, it
2 requires sort of distilling those cases down. They seem to
3 require that the licenses involve similar or same technology
4 and be generally economically comparable.

5 So in this case, I find that the third-party
6 licenses here meet the low threshold for admissibility and
7 concern over their dissimilarities go to the weight of the
8 evidence and are more than fair game for cross-examination.

9 Simply stated, they are licenses for Blaze Advisor
10 between FICO and another entity. The fact that they are
11 perpetual, rather than for a fixed term, is a more than fair
12 field of inquiry by FICO, and FICO is more than free to
13 admit testimony and evidence why the considerations that go
14 into the hypothetical license negotiation are different from
15 those that are involved in initial perpetual licenses like
16 these.

17 I will also note that two of the licenses, as I
18 read them, D172 and D281, do not appear to be perpetual
19 licenses. So some further guidance to the parties. This
20 issue or fight over actual damages has focused the parties a
21 little bit more concretely, I think, on the standard for
22 actual damages. I mentioned at the outset that the license
23 fee is premised on the infringer's use, that is the license
24 that is being negotiated for in the hypothetical
25 negotiation.

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1 And in order to avoid some of the disputes that
2 have arisen, I am going to define now the scope or the
3 license that is the subject of the hypothetical negotiation,
4 and at the end of the case, this will be, or something,
5 very, very close to this, will be the instruction to the
6 jury.

7 The license that is the subject of the
8 hypothetical negotiation is a one-time, enterprise-wide
9 global license to use Blaze Advisor for internal business
10 purposes in 15 applications for a period of three years by
11 an insurance company with annual revenues of approximately
12 30 billion. Let me just pause there so people can follow
13 that, and I want to emphasize something that I just said.
14 It's a one-time, three-year license.

15 So and that is the economic circumstance in which
16 the hypothetical negotiation is occurring. So let me turn
17 to the last issue about whether those license agreements may
18 also be introduced as evidence of the meaning of the FICO
19 Federal license, and I find that they cannot be.

20 I've reviewed the cases by Federal. They fall
21 into two categories, I would say. Most of them involve
22 evidence that or contracts between the two parties involved
23 in the litigation.

24 The other case, which is the Quadrant case, really
25 involves a different circumstance where the Court was

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1 construing the meaning of a provision in a contract that had
2 very discrete language and looked to how two other decisions
3 by a court had interpreted very similar language that just
4 omitted one word, and so this was not a circumstance where
5 the jury was considering how do I interpret an ambiguous
6 contract based on a whole variety of agreements, but rather
7 the Court was applying interpretations of other courts as a
8 matter of law to a very discrete set of or very discrete bit
9 of language in a contract before it.

10 So I find that Federal's cases are inapposite, and
11 FICO's cases generally establish the point that I think is
12 accurate that parol evidence is, if not exclusively, then
13 virtually exclusively, evidence of course of dealings
14 between the two parties at issue in the litigation, which is
15 not the case with the license agreements between FICO and
16 third parties, and I would exclude those licenses or limit
17 their admission to not prove the meaning of this contract.

18 And I would also say that that is based not only
19 on what I have just said, but also on Rule 403 and the
20 danger that this might confuse the jury or waste time or
21 unfairly prejudice FICO. That said, obviously Federal is
22 free to ask a witness, couldn't you have used language like
23 such and such, not referencing the agreement, but you can
24 use, couldn't you have used language like this.

25 And in that circumstance if the witness says, no,

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1 we could not have or we never have, then, you know, it's a
2 fair subject of impeachment, but the agreements may not be
3 put in for that purpose, and I will consider giving a
4 curative instruction or an instruction at the end of the
5 case on that topic.

6 All right. That's the Court's ruling on those
7 issues. Let me ask.

8 Mr. Hinderaker, any need for clarification?

9 MR. HINDERAKER: I think I understand. So from
10 point of view of clarification, no. From the point of view
11 of our factual evidence, some of the, some of the years of
12 use of the application are more than three years, but so
13 there is a -- there is an issue around that, limiting it to
14 a three-year term.

15 THE COURT: Understood.

16 MR. HINDERAKER: Limiting it to a term I have no
17 quarrel with. Limiting it to a certain -- the term limits
18 should be in line with the evidence.

19 THE COURT: It should, and I will look to the
20 parties to tell me what the term is. I think it should be
21 the maximum term of any of the uses, so if it's four years,
22 it's four years, if you're following what I'm saying.

23 And then I would say, I have described it as a 30
24 billion dollar enterprise. Again, I'm looking to the
25 parties to make sure that I have that right number. I think

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1 you know what number I'm referring to.

2 Anything further on your side, Mr. Hinderaker?

3 MR. HINDERAKER: No, Your Honor. I understand the
4 construct. I understand the Court's thinking, I think, and
5 then it will conform with the evidence as it finally comes
6 in in the trial.

7 THE COURT: Very well. And let me just before I
8 turn to Federal for a second, let me just say a couple of
9 things.

10 Ms. Kliebenstein's letter not last night but the
11 one immediately previous to that, I just want to say
12 contained a complete, accurate and fair summary and a clear
13 understanding of what I had said, so I appreciate that. One
14 other thing you guys should know. There is no way you would
15 know this. We don't have access to Lexus. We have Westlaw,
16 so if you cite Lexus cases, I can usually find them on
17 Westlaw, but not always.

18 So if you do cite Lexus, if you wouldn't mind
19 attaching a copy of the case, that would be helpful. Okay.
20 Any questions or clarification by Federal?

21 MS. GODESKY: So we noticed the same thing
22 Mr. Hinderaker raised about the term of the license. So we
23 will think about that and come back to the Court. Just so
24 it's clear, this hypothetical negotiation is in the context
25 of willing buyer, willing seller, not someone under the

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1 threat of copyright infringement if they're continuing to
2 use the product.

3 THE COURT: Correct.

4 MS. GODESKY: Okay.

5 THE COURT: It is an arm length negotiation
6 between a willing buyer and a willing seller, and so, yes.
7 That context cannot under the law include the fact of threat
8 of litigation or claim of breach, that one of the cases, and
9 I believe it was On Davis, maybe it was one of the other
10 ones, made it very clear that the infringer's use not
11 accounting for the claim of infringement. Okay?

12 MS. GODESKY: And then, Your Honor, on the last
13 issue you ruled on, this issue of introducing other license
14 agreements to resolve the ambiguity in Section 10.8, we
15 certainly --

16 THE COURT: You disagree. I understand.

17 MS. GODESKY: We disagree, yes, but I also think
18 your ruling did not address another reason why these
19 contracts are plainly admissible which is, the door has been
20 opened. Mr. Hinderaker opened this case by declaring this
21 is the standard FICO language, and then Ms. Boone came on
22 the stand and said this is the standard 10.8 language, and
23 this is its business purpose.

24 And so we have to be able to challenge that with
25 evidence that shows, this isn't standard language. It's

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1 different in, I mean, they produced hundreds of contracts.

2 I have no intention of producing or entering into evidence
3 hundreds of contracts, but we should be able to show there
4 is nothing to prove that this is the standard Section 10.8,
5 and the business purpose that they're describing is
6 reflected in numerous other contracts that they regularly
7 enter into and are completely distinct from the provision in
8 this contract.

9 The door is open, and we have to be able to
10 challenge this notion that this is standard and consistent
11 with our standard business purpose.

12 THE COURT: I would, I would say this: I think
13 you can challenge the notion that this is standard language.
14 Okay? And to that extent, the agreements that come into
15 evidence can demonstrate that it's not or the jury can
16 decide whether it's standard language, but what it can't be
17 used for is to say if, in order to interpret 10.8 in this
18 contract, you need to consider the language of these 10
19 other license agreements. That I think is beyond what the
20 law allows, and so it's a very thin distinction.

21 But the license agreements, you know, I've said
22 they come in for whatever use the jury decides to make of
23 them in the hypothetical negotiation. I think you are free
24 to say that the claim that this is standard language is
25 belied by other evidence, but Mr. Hinderaker is more than

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1 free -- I'll give you a second -- is more than free to say,
2 you know, there is no evidence that it's not standard.
3 There is just, we have a lot of agreements.

4 So I understand your point, but I don't think you
5 can get from there to, and therefore, this is how to
6 interpret 10.8 in light of the language of these other
7 agreements.

8 MS. GODESKY: But they have their witnesses, Your
9 Honor. We saw it with Ms. Boone, and I expect to see it
10 from other witnesses testifying that we, we have a standard
11 business purpose behind our assignment clauses, and the
12 standard purpose is that if there is a merger or acquisition
13 that results in more revenue, right, we have the ability to
14 get more money through a license fee.

15 And the fact that there are numerous license
16 agreements that actually say that, if there is a merger or
17 acquisition that results in more revenue we have a right to
18 get additional license fee, in contrast to the Chubb license
19 agreement, that is completely probative of resolving the
20 ambiguity in 10.8. They know how to negotiate that language
21 in to serve the business purpose.

22 They didn't here, and the jury should be free to
23 consider that.

24 THE COURT: Well, the problem with that I think
25 is, you are assuming that that is -- you said they are free

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1 UK?

2 A. I cannot identify those. They dealt with the help desk

3 support, and they would raise the tickets. So they do

4 not -- that worked generically as FICO. Mike Sawyer would

5 be the contact person for me in case any additional

6 assistance would be needed.

7 Q. Do you recall yourself contacting or engaging Mike

8 Sawyer and yourself?

9 A. I did.

10 Q. And when was that?

11 A. That's during the -- between 2010 and 2014, if my memory

12 serves me correctly.

13 Q. Tell me about your contacts with Mike Sawyer.

14 A. I got informed by developers that there was an issue and

15 they need to be resolved quickly. So I would just make him

16 aware. Because as the client representative of FICO, he has

17 an influence to expedite the request to go to the help desk.

18 Q. So is it fair to say that you advised Mike Sawyer making

19 him aware that people in the UK were reaching out to the

20 help desk for help?

21 A. Correct. In the UK or U.S. That was normal part of my

22 working relationship with him.

23 Q. Okay. Do you recall specifically reaching out to Mike

24 Sawyer specific to install issues with regard to UK?

25 A. I believe I did.

1 mind, go through these applications. So let's start with

2 CSI Express?

3 A. Okay.

4 Q. So what's the function or purpose of CSI Express?

5 A. It's a policy administration system for --

6 COURT REPORTER: For what?

7 THE WITNESS: Policy administration system for

8 specialty lines.

9 BY MR. HINDERAKER:

10 Q. And does it encompass all of the lines within the

11 specialty line of business?

12 A. I believe -- it is a majority of them.

13 Q. Are you saying you don't know, so you're assuming a

14 majority?

15 A. I cannot speak for sure this it is all the lines within

16 the policy. So yes. I don't know for fact.

17 Q. And CSI Express uses Blaze Advisor?

18 A. Correct.

19 Q. Among other technologies?

20 A. Among other technologies, yes.

21 Q. When I say it's using Blaze Advisor, we'll assume it can

22 be among other technologies.

23 A. Correct.

24 Q. Okay. And what is the purpose of a policy

25 administration system?

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1 Q. You believe you did?

2 A. Yes.

3 Q. Do you remember when?

4 A. I don't recall the exact date.

5 Q. Same questions with respect to installations in Canada.

6 A. Again, I did -- yes, I did. And I do not recall the

7 exact date.

8 Q. So, again, there is no individual person at FICO that

9 you know of that assisted in the installation?

10 A. No.

11 Q. To your knowledge, who do you -- did anybody tell you --

12 as opposed to your assumptions, did anybody tell you that

13 Canadian Chubb representatives placed tickets at the help

14 desk?

15 A. My conversations in the past with Tony Zahn, who was the

16 architect for the Canadian zone, that they opened the

17 ticket.

18 Q. Mr. Miroluz, I am showing you an exhibit that we are

19 numbering 188.

20 So I would like you to go to the table the last

21 page of 188, if you would, as well as go to that second

22 exhibit the 30(b) 6 notice. Do you have those two in front

23 of you. Do you have that?

24 A. Yes.

25 Q. What I would like to do is, with these two, these two in

1 A. As I said before, to book, bind and issue the policy

2 for -- in this particular case, specialty line of business

3 in the case of CSI Express.

4 Q. What is automated renewal process?

5 A. It is part of the CSI Express suite tools which allows

6 automated processing of the renewals issued through the CSI

7 Express.

8 Q. It allows the what?

9 A. Automated processing of renewals for policies issued

10 through the CSI Express.

11 Q. Okay. And by, "Automated renewal of policies issued

12 under CSI Express," does that mean renewal of policies

13 without human intervention?

14 A. Correct.

15 Q. What is CSI Express renewal rule maintenance center, its

16 purpose and function?

17 A. It is part -- it's an applications which is part of

18 Blaze Advisor software which allows nontechnical user

19 maintenance of the business rules.

20 COURT REPORTER: The business what?

21 THE WITNESS: Business rules.

22 COURT REPORTER: Rules?

23 THE WITNESS: Yeah. R-U-L-E-S.

24 BY MR. HINDERAKER:

25 Q. And what is the function and purpose of CSI Express

<p style="text-align: right;">993</p> <p>1 Q. All right.</p> <p>2 A. And that's based on that score, the underwriter can</p> <p>3 assess the severity of the risk.</p> <p>4 Q. And assessing the severity of the risk then informs the</p> <p>5 premium, the price?</p> <p>6 A. That, yes, among other things.</p> <p>7 Q. Among other things. Yes, among other things.</p> <p>8 It informs what solution is going to be provided</p> <p>9 by way of the insurance policy?</p> <p>10 A. Exactly.</p> <p>11 Q. And are there situations in which, for the renewal --</p> <p>12 well, and then does profitability indicator -- does that</p> <p>13 operate with respect to each renewal application?</p> <p>14 A. For the specific line of businesses. So not every line</p> <p>15 of business would go through the profitability --</p> <p>16 profitability indicator is only for a certain line of</p> <p>17 businesses.</p> <p>18 Q. Okay. So there is a broader -- there is a broader array</p> <p>19 of business that goes through CSI Express?</p> <p>20 A. Correct.</p> <p>21 Q. And within that broader array, there is a subpart of</p> <p>22 that which, to which profitability indicator functions?</p> <p>23 A. Correct.</p> <p>24 Q. And then within that subpart, will profitability</p> <p>25 indicator function and then one possible outcome is that the</p>	<p style="text-align: right;">995</p> <p>1 A. It was an extension of the profitability indicator or</p> <p>2 predictive modeling. It's additional to provide the</p> <p>3 guidance in human readable form, instead of score providing</p> <p>4 the wording.</p> <p>5 Q. Okay. And then under the CSI SBU, there is the</p> <p>6 automated renewal process and that the subpart ARP 1,</p> <p>7 renewal categorization. What is that?</p> <p>8 A. Ultimately, the renewal process consists of two parts.</p> <p>9 It is determining -- ARP 1 specifically focuses on te</p> <p>10 determining if policy is eligible to be processed</p> <p>11 automatically.</p> <p>12 Q. If it is, then it is processed automatically?</p> <p>13 A. Yes.</p> <p>14 Q. And if it isn't, it goes to a human underwriter?</p> <p>15 A. Exactly. Correct.</p> <p>16 Q. And then the issues to be addressed are highlighted?</p> <p>17 A. Correct.</p> <p>18 Q. What is ARP 2?</p> <p>19 A. If policy is eligible for renewal automation, the ARP 2</p> <p>20 is taking care for all the issuance -- book, binding and</p> <p>21 issuance process associated with the renewal process.</p> <p>22 Q. So ARP 2 is the instances where the policy is</p> <p>23 automatically renewed?</p> <p>24 A. Correct.</p> <p>25 Q. Let's talk about DecisionPoint. What is that, its</p>
<p style="text-align: right;">994</p> <p>1 renewal is renewed automatically?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. So the information that profitability -- the</p> <p>4 score that profitability indicator generates will inform</p> <p>5 other parts of the system and perhaps -- and there will be</p> <p>6 instances where human intervention is not necessary for the</p> <p>7 policy to be renewed?</p> <p>8 A. Correct.</p> <p>9 Q. And if human intervention is necessary for the policy to</p> <p>10 be renewed, the software application highlights for the</p> <p>11 human underwriter what to address?</p> <p>12 A. That is correct.</p> <p>13 Q. On Exhibit 188 we have the SBU -- I'm still more or less</p> <p>14 talking about CSI Express, but we have the SBU CSI.</p> <p>15 A. Correct.</p> <p>16 Q. And that's stands for Chubb specialty lines?</p> <p>17 A. Insurance.</p> <p>18 Q. Or insurance. Chubb Specialty Insurance.</p> <p>19 And then if we look at te cell CSI Express, it has</p> <p>20 a corresponding subpart, predictive modeling?</p> <p>21 A. Correct.</p> <p>22 Q. What is that?</p> <p>23 A. It's the old name for profitability indicator.</p> <p>24 Q. And then it has another subcell, underwriting guidance.</p> <p>25 What is that?</p>	<p style="text-align: right;">996</p> <p>1 function and purpose?</p> <p>2 A. DecisionPoint is how to make it quote, quote --</p> <p>3 COURT REPORTER: I'm sorry?</p> <p>4 THE WITNESS: Automated quoting system for small</p> <p>5 book of business.</p> <p>6 BY MR. HINDERAKER:</p> <p>7 Q. Is it, what is the -- is there a functional relationship</p> <p>8 between DecisionPoint and CSI Express?</p> <p>9 A. Correct. Yes.</p> <p>10 Q. And what is that relationship?</p> <p>11 A. The quote issued in the DecisionPoint, if they are</p> <p>12 accepted by the customers, are ultimately entered as the</p> <p>13 policy in CSI Express.</p> <p>14 Q. All right. So let's start in the instance of -- so</p> <p>15 DecisionPoint is an application intended for a certain</p> <p>16 segment of the market?</p> <p>17 A. Correct.</p> <p>18 Q. And let's take a customer that's in that segment who is</p> <p>19 interested in a new -- say a noncustomer in that segment who</p> <p>20 is interested in becoming a customer, so it's a new policy.</p> <p>21 DecisionPoint functions -- tell me how DecisionPoint</p> <p>22 functions in the context of a new policy.</p> <p>23 A. The customer submits the form to the Chubb employee who</p> <p>24 is responsible for entering the information into</p> <p>25 DecisionPoint in the system.</p>

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1 Q. Can I -- so the customer -- does a customer access the
2 portal directly, or does the customer access it through the
3 agent/broker?
4 A. It is directly or through the agent/broker, but they
5 have to submit the application, paper application.
6 Q. So there is a customer-facing portal in DecisionPoint?
7 A. Not necessarily a customer-facing portal. It's not a
8 customer-facing portal. It's a paper application which they
9 fill up and submit it to the mailbox or fax it to the Chubb,
10 the Chubb team responsible for that.
11 Q. Okay. So hard copy application is submitted to either a
12 broker -- submitted to Chubb either directly or through a
13 broker/agent?
14 A. Correct.
15 Q. And now what happens?
16 A. The part of the team who is responsible for entering the
17 information would enter the information into the
18 DecisionPoint application.
19 Q. Is that a manual process?
20 A. Manual process. Internal Chubb manual process.
21 Q. So the information is entered into DecisionPoint?
22 A. Automated process picks up this information. It goes
23 through the -- I'm just going by the list here -- goes
24 through the eligibility process, which validates if the risk
25 is acceptable. I'm looking into the eligibility here.

1 A. It is never in bulk. It is individual risk being
2 assessed.
3 Q. So now that's completed.
4 A. It generates the quote letter, which the person in
5 internal Chubb team responsible for DecisionPoint will
6 either mail or e-mail to the customer or agent or broker.
7 Q. The quote letter?
8 A. Yes.
9 Q. And the quote letter is the offer at that price to sell
10 and bind insurance for that customer?
11 A. Correct.
12 Q. And DecisionPoint uses Blaze Advisor?
13 A. Yes.
14 Q. Let's go to -- if we look at Exhibit 188, the next SBU
15 is CCI, Chubb Commercial Insurance?
16 A. Correct.
17 Q. And let's talk about CUW. Does CUW stand for
18 "commercial underwriting workstation"?
19 A. That is correct.
20 Q. If you would tell us the functional purpose of CUW.
21 A. CUW is the system which allows underwriters to maintain
22 the records of the interaction with the customers --
23 documents, notes, et cetera.
24 Q. Okay. How is CUW, how is CUW used in connection with
25 the sale of insurance?

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1 Q. Mm-hmm (Yes).
2 A. It goes through the pricing process, which determines --
3 if risk is acceptable, determines a price for that
4 particular risk. It goes through some of the data
5 normalization, if necessary.
6 Q. What does "data normalization" mean?
7 A. Sometimes application submitted -- if address is missing
8 or address might not be -- zip code might not be correct.
9 So type of data validation, data correction. And it
10 generates the list of applicable endorsements.
11 Q. So it looks to see if there is an opportunity to sell
12 more insurance?
13 A. Not necessarily. Whether there's limitations on the
14 policy. Different outside limits, type of additional
15 coverage, which restricts the risk, because it depends on
16 the risk.
17 Q. So I imagine, is it accurate to say that each individual
18 application is going to be individually accessed?
19 A. Correct.
20 Q. In that individual assessment a decision is made whether
21 additional endorsements would be appropriate for that
22 circumstance?
23 A. Exactly.
24 Q. It may be in some circumstances yes, and then they'll be
25 presented, and some circumstances no?

1 A. As underwriter interacts with the customer, any
2 conversation, any documents he receives from insured has
3 been recorded and either manually or stored in the CUW.
4 Q. Okay. And CUW uses Blaze Advisor?
5 A. One of -- CUW is the suite of tools.
6 COURT REPORTER: The what?
7 THE WITNESS: Suite.
8 MR. HINDERAKER: S-U-I-T-E.
9 COURT REPORTER: Oh.
10 THE WITNESS: Only one application, inventory
11 management, is using in Blaze Advisor software.
12 BY MR. HINDERAKER:
13 Q. What is the function and purpose of inventory
14 management?
15 A. It assesses number of policies assigned to that
16 particular underwriter and raises the alert if number
17 exceeds certain thresholds.
18 Q. Is there an interrelationship of function between CSI
19 Express and CUW?
20 A. CUW is only as a ledger of records. It has nothing to
21 do with the CSI Express, just additional convenience for the
22 underwriter to store their records.
23 Q. Okay. And let's go to, let's go to CSI claims. Can you
24 tell me what that application is?
25 A. This was a small application developed for the actuarial

<p style="text-align: right;">1017</p> <p>1 through a witness, and the witness is going to have to be</p> <p>2 somebody who has knowledge or foundation for the document."</p> <p>3 And so through the first eight witnesses in this</p> <p>4 trial, we planned our case based on FICO's objection and</p> <p>5 then the Court's directive.</p> <p>6 And so last night FICO sent us a list of about 20</p> <p>7 different exhibits that they want to use with</p> <p>8 Mr. Ghislanzoni. He is our corporate representative, but he</p> <p>9 is not a 30(b)(6) deponent. He has not been educated on</p> <p>10 topics outside his personal knowledge.</p> <p>11 So the group of e-mails that were submitted to the</p> <p>12 Court, there is an evidentiary issue separate and apart from</p> <p>13 foundation for one of them, but all of them predate his time</p> <p>14 at the company. He is not on any of them, and he can't</p> <p>15 speak to what happened. And it's completely prejudicial to</p> <p>16 be confronting our corporate representative with e-mails and</p> <p>17 asking him questions about things that he has no knowledge</p> <p>18 of.</p> <p>19 Relatedly, Mr. Hinderaker also alluded to the fact</p> <p>20 that they want to try to use interrogatories with</p> <p>21 Mr. Ghislanzoni. They disclosed last night these are</p> <p>22 interrogatories that show various gross written premium</p> <p>23 levels run through certain applications. Mr. Ghislanzoni</p> <p>24 doesn't know anything about that. He wasn't involved in the</p> <p>25 process of running that data. And FICO took three or four</p>	<p style="text-align: right;">1019</p> <p>1 THE COURT: Right.</p> <p>2 MR. HINDERAKER: And in terms of jumping the gun</p> <p>3 on the interrogatories, they also tell us when the</p> <p>4 applications -- when Blaze Advisor was no longer used. And</p> <p>5 this goes to our earlier conversation. We have to clean</p> <p>6 them up with all the --</p> <p>7 THE COURT: Understood. Yes.</p> <p>8 Okay. Let's bring in the jury.</p> <p>9 By the way, one of the jurors informed me that</p> <p>10 they are perfectly happy with a 60-minute lunch break, so we</p> <p>11 will go to 60 minutes.</p> <p>12 MR. HINDERAKER: I hope they don't shorten it up</p> <p>13 anymore.</p> <p>14 THE COURT: We will be down to 10 minutes by the</p> <p>15 end of the week.</p> <p>16 THE CLERK: All rise for the jury.</p> <p>17 (Jury enters.)</p> <p>18</p> <p>19 (In open court with the Jury present.)</p> <p>20 THE COURT: Be seated.</p> <p>21 You may proceed, Mr. Hinderaker.</p> <p>22 BY MR. HINDERAKER:</p> <p>23 Q. I have given you Exhibit 189. It has the heading CSI IT</p> <p>24 Summit. I acknowledge that it bears a date of August 2006.</p> <p>25 Have you seen this before?</p>
<p style="text-align: right;">1018</p> <p>1 days of 30(b)(6) deposition testimony of multiple deponents</p> <p>2 on how that data was run, where it came from and what it</p> <p>3 means.</p> <p>4 So if they wanted party admissions about, you</p> <p>5 know, those gross written premium numbers, they could have</p> <p>6 designated that deposition testimony. Apparently, they</p> <p>7 don't like the deposition testimony, so, instead, they would</p> <p>8 like to prejudice our case by confronting our corporate</p> <p>9 representative with rogue responses that he had no</p> <p>10 involvement of, no knowledge of and would be completely</p> <p>11 confused by.</p> <p>12 THE COURT: Okay. Mr. Hinderaker, very briefly.</p> <p>13 You're going to have to lay foundation.</p> <p>14 MR. HINDERAKER: Absolutely. So there will be --</p> <p>15 a foundation will be laid through Mr. Ghislanzoni. It will</p> <p>16 or it won't.</p> <p>17 THE COURT: Okay.</p> <p>18 MR. HINDERAKER: He testified at his deposition,</p> <p>19 "A decision was made to take a copy of the Canadian</p> <p>20 application and use it as a base to create an Australian</p> <p>21 application."</p> <p>22 In his role as the architect overall, he was</p> <p>23 knowledgeable and participated in the decisions of how and</p> <p>24 when to remove Blaze Advisor. He is not testifying as a</p> <p>25 corporate representative or as a 30(b)(6), but as a person.</p>	<p style="text-align: right;">1020</p> <p>1 A. No.</p> <p>2 Q. Okay. So when you picked up your involvement with Blaze</p> <p>3 Advisor, was this part of the background information --</p> <p>4 information that you reviewed?</p> <p>5 A. At that point, no, it was not, because at that point in</p> <p>6 time the decision to use the Blaze Advisor was already made</p> <p>7 and the work on the project was already started. So my role</p> <p>8 at that time was a developer. So I was really boots on the</p> <p>9 ground to help with the development of Blaze Advisor.</p> <p>10 Q. I see.</p> <p>11 A. I was not an architect at that point of time.</p> <p>12 Q. Mm-hmm. Who, who was the person leading the Blaze</p> <p>13 Advisor project in November of 2006?</p> <p>14 A. Owen Williams who was one of the department managers at</p> <p>15 CSI. He was leading the Blaze Advisor project.</p> <p>16 Q. We've handed you Exhibit 191.</p> <p>17 A. Yes, I do.</p> <p>18 Q. Okay. And from the metadata, I believe you were the</p> <p>19 author of that.</p> <p>20 From the metadata, I believe you are the author of</p> <p>21 this. Would you agree?</p> <p>22 A. Oh, yes.</p> <p>23 Q. Okay. And what was the purpose of your creation of</p> <p>24 Exhibit 191?</p> <p>25 A. After the success of the business rules project for the</p>

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1 ARP 2, the purpose of this document is to market the
 2 business rules technology -- business rules across the
 3 enterprise, across the Chubb.
 4 Q. And that was the purpose. And what was the goal to be
 5 achieved from that purpose?
 6 A. We thought that using the business rules can bring the
 7 benefits to the IT teams across the Chubb. So the goal is
 8 as they become familiar, they would start implementing or
 9 using the business rules technology that is making their
 10 life simpler.
 11 Q. Okay. So the -- was there a benefit to -- separate from
 12 the simpler life of the underwriters, was there a benefit to
 13 the business that you were advancing?
 14 A. Benefit would be, from my view, would be quicker
 15 turnaround of the projects; thus, we can deploy the business
 16 requests significantly quicker, as was demonstrated by the
 17 ARP 1 project.
 18 Q. And from your point of view, what was the benefit to the
 19 business when you were able to do that?
 20 A. Again, the changes or business changes can be deployed;
 21 thus, whatever benefit is intended for that particular
 22 implementation can be achieved significantly faster.
 23 Q. Does that mean then that new policies can be put to
 24 market faster?
 25 A. Not necessarily, but could be more precise guidance or

1 A. Okay.
 2 Q. And you wrote Introduction and Scope 1.1?
 3 A. Correct.
 4 Q. All right. So you start that with, "The purpose of this
 5 document is to illustrate." And then tell me what you mean
 6 by, "Such as increasing agility to implement the business
 7 change and reducing time to market the new products and
 8 services."
 9 First paragraph.
 10 A. So we believed at the time of --
 11 COURT REPORTER: I lost you.
 12 THE WITNESS: Sorry. I believed at the time I
 13 wrote this document that implementation of the business
 14 rules technology --
 15 MR. FLEMING: I'm sorry. I thought you were
 16 saying 40.
 17 BY MR. HINDERAKER:
 18 Q. Let's try again.
 19 A. Yeah. So at the moment of writing this document, I
 20 believed that use of the business rules technology would
 21 enable IT team to deploy any business request to production
 22 or to come to market significantly faster as compared with
 23 traditional technologies employed at Chubb at a that point
 24 in time.
 25 Q. Say what?

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1 more precise scoring for that particular example. It
 2 doesn't necessarily impact the speed or increase on the
 3 business.
 4 Q. Let's back up a second. So the reason for having Blaze
 5 Advisor is that it has an ultimate benefit for the business.
 6 A. Correct.
 7 Q. Correct?
 8 A. Ultimately, yes.
 9 Q. Yes, ultimately. And one of the benefits of, I think
 10 that you just said, is that it makes people lives easier?
 11 A. Correct.
 12 Q. Correct? And the people that you're referencing are the
 13 underwriters?
 14 A. No. I'm referencing the IT teams because they're
 15 ultimately responsible. Again, I'm talking -- my role was
 16 from the IT perspective.
 17 Q. Okay.
 18 A. I would not be able to speak for any business benefits
 19 achieved through the use of the Blaze Advisor technology or
 20 business rules technology. I do speak around the
 21 benefits -- that's what I speak in this document, is where
 22 the business rules technology could benefit from the IT
 23 point of view.
 24 Q. Anyway, that's what I said. 4 of 42 and Bates number
 25 0004.

1 A. It increases the agility of the project and increases --
 2 and reducing time to market.
 3 Q. It increases the agility of the business?
 4 A. Agility of implementation. Again, as you can see
 5 specifically here, it is agility to implement to business
 6 changes.
 7 So I'm not speaking to the business benefit for
 8 this. This specifically says if I have a request from the
 9 business to implement particular change, I can deploy it, I
 10 can implement it significantly faster and deploy it
 11 significantly faster for business to use.
 12 Q. As a consequence, as you say, that reduces the time to
 13 market for new products and services, correct?
 14 A. If it's implemented in the Blaze Advisor. Again, big
 15 disclaimer.
 16 Q. And you just, you just, you just said the phrase, "if
 17 implemented in Blaze Advisor."
 18 And I want to turn you to the next page. And you
 19 have a heading, "What are business rules?" And then you
 20 have a description, you know, four paragraphs down,
 21 "Traditionally embedded" -- "traditionally embedded inside
 22 code." And then you say -- and then you have the next
 23 paragraph, "Externalizing the business rules to be a
 24 structured decision management."
 25 Is that what you're meaning by if Blaze Advisor is

1025**1027**

1 used because it externalized the business rules?
 2 A. Correct. And that is how it was marketed to us by FICO
 3 when we bought the tools.
 4 Q. And then -- let's see. And then on the same page at the
 5 bottom, "Enhance business performance by." And Number 1 is,
 6 "Increasing Analytical Ability."
 7 Over time, can you tell me how Blaze Advisor
 8 applications were used to increase analytical ability?
 9 A. Profitability indicator is an example of such
 10 application which provides the ability to determine the
 11 severity of the risk as underwritten by Chubb.
 12 Q. Okay. And then Number 2, Automate Decisions by, and
 13 then it says, "Automating High-Volume, Low-Risk Decisions."
 14 Is that a component of -- tell me what applications of Blaze
 15 Advisor used that.
 16 A. DecisionPoint.
 17 Q. How about Automatic Renewal?
 18 A. Automatic Renewal -- it renews all the policies, so I
 19 wouldn't qualify it as low risk. It's entire book of
 20 business, whereas DecisionPoint is for specific low-risk,
 21 high-volume business.
 22 Q. And then II is "Establishing Uniform Decisions Across
 23 Multiple Functions, Channels and Business Touch Points."
 24 What applications using Blaze Advisor did that?
 25 A. Essentially, again, profitability indicator, because it

1 A. I prepared the deck in collaboration with Michael Sawyer
 2 from FICO.
 3 Q. Okay. All right. Let me just go to the Bates number
 4 57208?
 5 A. 50208.
 6 Q. The second page.
 7 A. Yep.
 8 Q. And there is this quote from Donald Light. Why did you
 9 include that quote in the presentation?
 10 A. I felt that the term "business rules" was used a little
 11 bit loosely. People do not realize or do not have complete
 12 understanding about what the business rules really is versus
 13 the term of "decision business" and "decision-making
 14 process" is a better illustration or a better terminology
 15 for the technology itself. I think it's gives the people
 16 better insight into that.
 17 Q. And is that because as a consequence of the business
 18 rules application, it enables a company to make decisions?
 19 A. Yes. Same as wrote in the EcoSystem document. Better
 20 uniform decisions.
 21 Q. Let me turn to the next page, 209. And, again, these
 22 are your statements in the slides?
 23 A. Correct.
 24 Q. All right. So we don't need to read them to each other.
 25 But under the Potential Future Applications, there is a

1026**1028**

1 is used in many different places. Automatic Renewal, CSI
 2 Express, DecisionPoint. That's an example of uniform
 3 decision about the risk.
 4 Q. It would be separate from profitability indicator. Is
 5 this also true for the underwriting guidance for CSI
 6 Express?
 7 A. Underwriting guidance is developed -- yes, it is correct
 8 in terms of application. But since it speaks about multiple
 9 functions and touch points, decision points, my view at
 10 least, it's a better example.
 11 Q. Okay. CSI Express and underwriting guidance does
 12 establish underwriting decisions?
 13 A. Correct. But in context of one application decision is
 14 not shared across anywhere else.
 15 Q. This is Exhibit 192 for the record. It's a cover e-mail
 16 having a subject line of "Creating and Managing Business
 17 Rules, CoE, Henry Mirollyuz, Chubb," dated 9/16/2009, and
 18 then the attachment bearing Bates numbers FICO0057207
 19 through 57222, bears as a title "FICO Forum: Decision
 20 Management Tools User Group, September 16-18, 2009." It
 21 includes on the title page, "Henry Mirollyuz, technical
 22 analyst, business rules CoE, Chubb."
 23 Do you recall this presentation, Mr. Mirollyuz?
 24 A. Yes, I do.
 25 Q. Okay. Did you prepare this entire deck?

1 heading, Cross/Upselling?
 2 A. Yes.
 3 Q. Was that application implemented during your time at
 4 Chubb?
 5 A. Not to my knowledge. It was considered, as you can see
 6 it here, but I don't believe it was implemented.
 7 Q. Would it have been a functionality of CSI Express?
 8 A. Correct.
 9 Q. And then the next header is Predictive Models. Was that
 10 implemented at CSI Express -- was that implemented at Chubb?
 11 A. Yes, it was. Profitability indicator.
 12 Q. And if we go to the next page, 57210, you're giving a
 13 case study of Automated Renewal I?
 14 A. Correct.
 15 Q. Thank you. And in this, with respect to Automated
 16 Renewal I on this slide, the overall business goal is to
 17 increase the percentage of automated renewal submissions.
 18 Was that accomplished?
 19 A. Correct. Yes, it was.
 20 Q. And it goes on to say that the policies that are
 21 automatically renewed, the more time the underwriter has to
 22 develop and produce additional business or handle
 23 additional -- produce additional business or handle
 24 additional business. And that also was achieved?
 25 A. I believe it was.

1029**1031**

1 Q. And then there a header, "Objectives/Benefits, and
2 Reach." Were those achieved as well?
3 A. I cannot say if it was completely achieved or not.
4 Q. I'm sorry?
5 A. I cannot say if it was completely achieved or not. It
6 was the goal to achieve those benefits. But was it achieved
7 100 percent? I'm not sure. I cannot speak to that.
8 Q. Okay. Do you know if it was achieved to some extent?
9 A. To some extent, yes, it was.
10 Q. You have been handed Exhibit 196.
11 COURT REPORTER: 193.
12 BY MR. HINDERAKER:
13 Q. I'm sorry. 193. Thank you. And an Introduction to
14 Business Rules, Improving Performance Through Decision
15 Management. And you, sir, are one of the presenters; is
16 that right?
17 A. That is correct.
18 Q. And do you recall --
19 A. Oh, yes.
20 Q. -- the context of this? What was it?
21 A. It was a presentation on one of the forums which was
22 hosted by FICO to talk about the business rules and Chubb
23 experience in particular.
24 Q. All right. So this was an external presentation outside
25 of Chubb?

1 Q. And my question is: From the deployment of Blaze
2 Advisor and the particular Blaze Advisor applications at
3 Chubb, can you describe for me how the Chubb Blaze Advisor
4 applications align with these five points?
5 A. I'm not sure I follow the question the way it's stated.
6 Q. Let me say it this way: Blaze Advisor applications that
7 were implemented by Chubb aligned with the -- made
8 decisioning more precise?
9 A. So again, Profitability Indicator, as I said before, is
10 a great -- is an example of precise decision to identify
11 high-risk policies or customers.
12 Q. And Chubb's implementation of Blaze Advisor applications
13 made decisioning more consistent?
14 A. For the lines which were implemented. So the Blaze
15 Advisor for Profitability Indicator.
16 Q. That's another example?
17 A. Yep.
18 Q. CSI Express is another example?
19 A. CSI Express, again, is too in general, but Blaze
20 component is used for a specific line of -- as I said
21 before, specific line of business. So for those implemented
22 for Blaze, yes, it makes decisioning much more precise.
23 Q. And then another dimension of decisioning is agility.
24 And you mentioned that in your earlier slides --
25 A. Correct.

1030**1032**

1 A. Yes.
2 Q. Then the next -- the next page has the next slide,
3 Business Rules Overview, CoE, October of 2009. Are you the
4 author of the slides that follow that?
5 A. If my recollection is correct, it was a collaborative
6 effort, so we all work. I mean, I would have provided the
7 information, but we all worked on all the presentations all
8 together.
9 Q. Is it accurate to say that you were one of the
10 collaborators on this entire set of slides?
11 A. Correct.
12 Q. So you had an input into all of the slides?
13 A. Yep. At least I was able to review it and provide the
14 feedback, if necessary.
15 Q. If you disagreed, you could say so?
16 A. Yeah.
17 Q. If you would go to the Bates number that has 0012 as its
18 ending.
19 A. Okay.
20 Q. You'll actually get the original 12 of this slide as
21 well. You see that slide bears the heading, "What is
22 Decision Management? FICO's Point of View."
23 A. Yep.
24 Q. And then it has five dimensions of Decision Management?
25 A. (Moves head in affirmative manner.)

1 Q. -- as one of the benefits of Blaze Advisor, deploying
2 Blaze Advisor?
3 A. Correct. We were able to implement the changes quicker
4 than what we were able to do it before.
5 Q. And another dimension of using Blaze Advisor is speed to
6 market. You were able to accomplish some of that?
7 A. Correct.
8 Q. And if you would -- the e-mail itself is 5/27/15, but
9 then the e-mail has 5/21/15, just to be clear.
10 And if you would go to the e-mail Bates numbered
11 5271, looking at that profitability indicator. And,
12 Mr. Mirolyuz, are you the author of this slide?
13 A. I could have provided the information for that slide.
14 However, I don't recall if I was the author or Mike created
15 the slide himself.
16 Q. So whether your fingers touched the keys or not, the
17 information on the slide is your information?
18 A. Correct.
19 Q. And then on the top left corner is the heading
20 "Initiative," and it lists various objectives, benefits?
21 A. Correct.
22 Q. And are you listed -- and then under the bottom left,
23 there's another cell, "Plus/Delta," and then under Plus it
24 says, "The defined business benefit was realized."
25 A. Correct.

1033**1035**

1 Q. Let's go to the next slide. And this one is talking
 2 about DecisionPoint, correct?
 3 A. Correct.
 4 Q. Okay. And, again, you list in the Initiative cell four
 5 business benefits to be achieved by the DecisionPoint
 6 application?
 7 A. Correct.
 8 Q. And then under Plus/Delta, you state that, "The defined
 9 business benefit was realized"; is that correct?
 10 A. That is correct.
 11 Q. Can you just tell us -- maybe we know, but what's the
 12 meaning of real-time quotes and bindable quote letter?
 13 A. That we can provide -- as requested, we can provide the
 14 quotes in real-time. They don't have to wait for -- the
 15 customers don't have to wait overnight to get a quote. They
 16 can receive it -- real-time is not absolutely correct. It's
 17 near real-time but within a reasonable time frame.
 18 Q. Do you know if Chubb has -- I'm just talking the big
 19 company Chubb -- undertaken the analysis to quantify the
 20 business value which is realized from Blaze Advisor
 21 applications?
 22 A. I cannot speak one way or another. I'm looking from the
 23 technical perspective. As I said before, the decision
 24 regarding using Blaze was already made before I started at
 25 Chubb.

1 is specifically that team.
 2 Q. That team. All right.
 3 So that's to whom it was presented. And then why
 4 was it being presented?
 5 A. Again, to inform them -- to develop the strategy and as
 6 well as a future roadmap in regards to the use of the
 7 Business Rules technology at Chubb.
 8 Q. Okay. And are you the author of the entire document
 9 then?
 10 A. With the input of information from others, but yes, I am
 11 the one who compiled it.
 12 Q. So it's fair to say, this is your document?
 13 A. Yes.
 14 Q. All right. If we could go to page 11, please, and that
 15 slide has a header, "2015 Business Rules Projects at Chubb
 16 (Active)." Are we on the same page?
 17 A. Yes.
 18 Q. All right. So the first line is "Corp" and then "PARS."
 19 Do you recall that?
 20 A. Correct.
 21 Q. What is it?
 22 A. It's a CBS, corporate -- it's a Premium Booking. So the
 23 name acronym was the PARS, and we called it CBS, Corporate
 24 Business Division.
 25 Q. Is Premium Booking and Corporate PARS the same thing?

1034**1036**

1 Q. You have Exhibit 195. It says, "Chubb Enterprise
 2 Architecture - Business Rules Strategy/Roadmap."
 3 A. Yeah.
 4 Q. I will just represent that the metadata suggests this is
 5 a July 21, 2017, document with yourself as the author. Do
 6 you recall it?
 7 A. Yes, I do.
 8 Q. Okay. What was the purpose of this document,
 9 Exhibit 195?
 10 A. The purpose of this document is to summarize the
 11 strategy around the business or provide a strategy in a
 12 future roadmap regarding the business rules for the Chubb at
 13 the Enterprise level.
 14 Q. Is this an internal presentation to Chubb?
 15 A. Correct. Specifically it is limited to the Chubb
 16 Enterprise Architecture. So it's not even presented to the
 17 broader audience. It's specifically intended for the
 18 Enterprise Architecture team.
 19 Q. The Enterprise Architecture team, is that speaking of --
 20 speaking to IT personnel who have Enterprise-wide
 21 responsibilities?
 22 A. In Chubb -- all Chubb architects. All the architects
 23 were the Enterprise architects. It was not separated by the
 24 business unit, so anybody who had the title "architect"
 25 would be considered to be the Enterprise architect. So this

1 A. Yes, it is the same thing.
 2 Q. And that project was completed per this slide?
 3 A. Correct.
 4 Q. Okay. And why did you choose DecisionPoint and
 5 Profitability Indicator as the applications to highlight in
 6 the presentation?
 7 A. Profitability Indicator was our first attempt to
 8 implement predictive models, risk assessment in Blaze. By
 9 itself, it was an interesting project, and people had raised
 10 an interest on how we did it and the benefit of using it.
 11 Q. Mm-hmm (Yes).
 12 A. DecisionPoint was the project which we were using the
 13 latest and greatest in terms of lessons learned and
 14 experiences. So we developed, actually in collaboration
 15 with working with FICO as well, some assistance there,
 16 application using --
 17 (Court reporter asked for clarification.)
 18 THE WITNESS: -- agile methodologies.
 19 MR. FLEMING: Agile.
 20 BY MR. HINDERAKER:
 21 Q. Is that what you mean, agile, A-G-I-L-E?
 22 A. Yeah.
 23 Q. Agile methodologies?
 24 A. Yeah. And we were -- I mean, it was -- again, a number
 25 of capabilities implemented in the DecisionPoint was

1049**1051**

1 Advisor?

2 A. So at the beginning of 2016, in February, around

3 February time, we commenced the activity of analysis of all

4 the software products, and we formed the working group

5 called a cross divisional TDA, and I believe one of the

6 evidence that you have seen today carried that name.

7 Q. Yes. And I think we will look at that in a little

8 while.

9 A. Yes.

10 Q. And so now to go from this time in 2016, and is it

11 accurate also to say that it was in the beginning of 2018

12 that a new IT strategy for the whole enterprise was being

13 formulated?

14 A. Yes. It was at the beginning of that year, 2018, we

15 formulated a new IT strategy for the enterprise.

16 Q. And between the date of March 16th -- date of March 2016

17 and this time frame in 2018, you started to look at a new IT

18 strategy for the whole enterprise, Blaze Advisor continued

19 to be used for applications in connection with selling

20 insurance?

21 A. Blaze Advisor continued to be used in those applications

22 that had Blaze Advisor as a component that came from legacy

23 Chubb and one application legacy ACE.

24 Q. We'll talk about that one application in a bit, but that

25 one application from legacy ACE, you're speaking of a legacy

1 that for some -- for some, many of the applications to

2 actually accomplish the replacement of Blaze Advisor with

3 Drools, correct?

4 A. Yeah. We completed an entire migration from Blaze

5 Advisor to Drools in April 2020.

6 Q. That was going to be my next question, just to follow

7 up. The whole project of replacing Blaze Advisor was not

8 completed until April 2020. Agreed?

9 A. That's when the last application was replaced, the rules

10 were replaced.

11 Q. Understood. So from March 2016, '17, '18, '19 to

12 probably March/April of 2020, that was a time frame that was

13 consumed to fully replace Blaze Advisor and all the

14 applications that Chubb & Son had them in?

15 A. I would correct that statement in terms of, we commenced

16 the activities of migration away from Blaze Advisor at the

17 beginning of 2019, and we completed them in April 2020.

18 Q. I think we just said the same thing. All right. Fine.

19 When you were in the process of considering what

20 technology to use enterprise-wide instead of Blaze Advisor,

21 my understanding is that you looked at only two other

22 technologies, one of them was ODM. You agree? Yes?

23 A. Yes.

24 Q. And the other one was Drools, correct?

25 A. Yes.

1050**1052**

1 ACE license agreement with Blaze Advisor?

2 A. That is correct.

3 Q. And we can -- and with respect to that license

4 agreement, Blaze Advisor was not used by legacy ACE in

5 connection with selling insurance?

6 A. It was a set of rules called common rules.

7 Q. Right. A set of rules for a different purpose than

8 selling insurance?

9 A. Yes.

10 Q. And then as you progressed into 2018 with your IT

11 strategy for the whole enterprise, at a certain point, you

12 reached a decision to adapt an open source technology

13 strategy. Agreed?

14 A. As part of the or embedded in the IT strategy that we

15 formulated in 2018, one important decision we made at the

16 time is to expand, increase adaption of open source

17 software.

18 Q. So now this brings us from March 2016 through 2017

19 through 2018, and it becomes later in the beginning of 2019

20 that you made a decision to replace Blaze Advisor with

21 Drools, the open source solution?

22 A. That is correct statement.

23 Q. And then in approximately -- it's approximate, but once

24 you made the decision in the beginning of 2019 to replace

25 Blaze Advisor with Drools, it took about nine months after

1 Q. And ODM is a product from IBM?

2 A. Yes.

3 Q. And Drools is an open source technology, correct?

4 A. Yes.

5 Q. Meaning anybody can use it, but if you want maintenance

6 service, you get that, you pay a fee for maintenance service

7 from a provider?

8 A. That is correct.

9 Q. All right. And if we haven't already said so, Drools

10 is, Drools is open source.

11 A. Correct. Drools is open source.

12 Q. All right. All right. Maybe we said that. So now I

13 would like to turn to that time frame before Blaze Advisor

14 was replaced, and in your binder is a document that you have

15 a tab for 517. Could you put that in front of you, please?

16 A. 517, did you say?

17 Q. Yes.

18 A. Found it.

19 MS. GODESKY: Your Honor, is this published to the

20 jury?

21 THE COURT: Not now.

22 MS. GODESKY: Thank you.

23 MR. HINDERAKER: Your Honor, this exhibit and the

24 other one are in the same category. We will do them one at

25 a time.

1053**1055**

1 BY MR. HINDERAKER:
2 Q. So, looking at Exhibit 517, I know that you are familiar
3 with the document, correct?
4 A. I am.
5 Q. And the document was created to describe the
6 applications that leverage Blaze Advisor. Agree?
7 A. Yes.
8 Q. And we've heard the word "leverage" a couple of times.
9 Leverage in your language means that Blaze Advisor is used
10 in the applications, correct?
11 A. That is correct.
12 Q. And while you had a team of people, that the document
13 was created by a team of your people, you contributed to the
14 creation of this document?
15 A. Yeah, I oversaw the activity.
16 Q. Yes. You oversaw it. And as we just -- as you said
17 already, the document then in its totality describes the
18 applications that leverage or use Blaze Advisor. Agreed?
19 A. Yes. At that point in time.
20 Q. At that point in time.
21 Your Honor, I offer Exhibit 517.
22 MS. GODESKY: We object, Your Honor.
23 THE COURT: Overruled. 517 is received.
24 MS. GODESKY: Your Honor, may I approach, please?
25 THE COURT: You may.

1 same that were just produced to us in litigation.
2 MS. GODESKY: Your Honor, I could show you the
3 deposition transcript from Mr. Ghislanzoni's deposition
4 where Ms. Kliebenstein marked. Mr. Fleming said, aren't
5 these the documents I just sent you in connection with the
6 mediation? Ms. Kliebenstein said yes, and then she said you
7 would be free to object under 408 and other bases at trial.
8 MR. HINDERAKER: Only with respect to that
9 document. Only with respect to that document.
10 MS. GODESKY: I have no objection to
11 Mr. Hinderaker questioning Mr. Ghislanzoni about the
12 information.
13 THE COURT: About the information in the document.
14 MS. GODESKY: But this is not a business record,
15 and it's not admissible, and there is also the Rule 408
16 issue.
17 THE COURT: Understood.
18 MR. HINDERAKER: I will be taking a long time and
19 I will read every line item in every column.
20 THE COURT: I understand.
21 MR. HINDERAKER: Which is a waste. No reason to
22 know it's even close -- you know, this whole issue about
23 settlement conferences and Rule 408, Rule 408 is not a
24 shield that prevents business information from being
25 discussed in a trial.

1054**1056**

1
2 (Side-bar discussion.)
3 THE COURT: Make sure you both speak clearly into
4 the mic.
5 MS. GODESKY: These charts, there is another one.
6 These charts were created in connection with mediation.
7 They are not business records. They are documents that were
8 created in connection with litigation. They are privileged
9 under Rule 408, and there is no basis to admit them into
10 evidence.
11 THE COURT: I did not hear him say they were
12 created for the mediation; is that true?
13 MR. HINDERAKER: I think we received, we received
14 a copy of it during that correct time frame. He testified
15 they were created for -- they were created by him and his
16 team. They were created for, knowing the Blaze Advisor
17 applications that leverage -- knowing the applications that
18 leverage Blaze Advisor as part of the transition to and
19 away. And it's their business facts. We're not going to
20 get within 100 miles of discussing some settlement or some
21 mediation.
22 THE COURT: No. I understand.
23 MR. HINDERAKER: And this isn't, and the only
24 document that we received, if we did receive it in this
25 context is this one. There are other documents like the

1 THE COURT: Right. I agree with that statement,
2 if this is ordinary business information, but I think --
3 MS. GODESKY: It was created for purposes of
4 litigation, not normal course of business.
5 MR. HINDERAKER: It's ordinary business
6 information. He didn't make up those numbers.
7 MS. GODESKY: I would have no objection to a
8 demonstrative that has these numbers, but it's not
9 admissible.
10 MR. HINDERAKER: If you are reading Rule 408 it's
11 not for the purpose of a claim, it's not for the purpose of
12 liability.
13 THE COURT: Hang on. Arguably it's a statement
14 made during compromised negotiations. I'm not sure it's
15 about a claim.
16 MR. HINDERAKER: But it's not offered for any
17 purpose related to 408.
18 MS. GODESKY: Your Honor, I want to be clear that
19 my objection is primarily that it's hearsay. It's offered
20 for its truth and it's not a business record. This is not a
21 document made in the regular course of business at Chubb.
22 It was a document made at the direction of counsel in
23 connection with settlement negotiations.
24 MR. HINDERAKER: I don't know that that's true,
25 and it's not in the deposition. The conversation gets

1057**1059**

1 into --

2 THE COURT: I -- I --

3 MS. GODESKY: If it is -- sorry, Your Honor.

4 THE COURT: I agree with you that I think this is

5 a tempest, frankly, in a teapot. The information is coming

6 in. If you need to read it line by line, you are welcome to

7 do that. The document can be published to the jury for

8 demonstrative purposes, but absent something further, I

9 won't allow it, admitting it into evidence, but the

10 information seems to me to be quite clearly admissible.

11 Okay.

12 MS. GODESKY: I have no objection to a

13 demonstrative, if we turn this into plaintiff's

14 demonstrative.

15 MR. HINDERAKER: I am going to go through the

16 process of having that information before the jury for the

17 truth of the matter of the information.

18 THE COURT: Yep.

19 MR. HINDERAKER: So he gets to testify to it.

20 THE COURT: Understood.

21

22 (In open court with the Jury present.)

23 THE COURT: Mr. Ghislanzoni, you will have to turn

24 your microphone back on. Exhibit 517 will be received for

25 demonstrative purposes only.

1 A. So as part of the integration activity between ACE and

2 Chubb, one important activity for us in IT was to decide

3 which applications were going to remain in the landscape and

4 therefore continue to be used and which ones we were going

5 to retire, eliminate from the IT landscape and stop using

6 them.

7 What it means is, at the end of 2018, this was the

8 status of the application at the time.

9 Q. And then if we go to the next row down where it says

10 Corporate Systems SBU, Premium Booking Application, it says

11 "Retiring but no ETA." So it says what it says. You don't

12 know when it will be retired, but the notion at this time is

13 to retire, correct?

14 A. Correct.

15 Q. And then we go to Canada. Evolution, not retiring, to

16 Adapt-ABL. COZ stands for which region?

17 A. COG?

18 Q. Yes.

19 A. COG is a term, is used to describe. It stands for Chubb

20 overseas general, which is the division of Chubb.

21 Q. Thank you. And EUZ is for Europe?

22 A. Euro zone.

23 Q. Better said. And for Adapt-ABL the plan at this time

24 was to retire 12/2018?

25 A. Yes.

1058**1060**

1 BY MR. HINDERAKER:

2 Q. And now, Mr. Ghislanzoni --

3 A. Yes.

4 Q. We're going to spend some time with it now.

5 A. Okay.

6 Q. And when -- and let me just confirm this: When you and

7 your team created this document, to the best of your

8 knowledge, the information on the document is accurate?

9 A. To the best of my knowledge, this was a good

10 representation of what we found in the end of 2018.

11 Q. So we have in front of us, let us -- first I want to go

12 across the top line, top row, and we will identify each of

13 those. The SBU stands for the business unit?

14 A. Yes.

15 Q. The application is the name of the application?

16 A. Yes.

17 Q. This document, all of the applications on this document

18 are applications using Blaze Advisor?

19 A. That used it at the time.

20 Q. Of course. At the time of its creation?

21 A. Yes.

22 Q. And then under application status, you will see, we can

23 read down that column, not retiring, not retiring, not

24 retiring, not retiring, not retiring, not retiring, meaning

25 what?

1 Q. We'll look later to see if that was accomplished on time

2 or not, and then EZER for PAS and Europe, retiring 6/2019,

3 and again we'll look from other documents and see if that

4 was accomplished or not. So far so good?

5 A. So far so good.

6 Q. And so far, to the best of your knowledge, all of this

7 was accurate?

8 A. That was what the team that worked at the time together

9 with me produced looking at all the data available.

10 Q. Good. Thank you. And then country supported on that

11 top row, we can look down the column and align the

12 application to the country that is identified. Are we

13 agreed?

14 A. That's the -- describes where, in which countries the

15 application is in use.

16 Q. Yep. And then Adapt-ABL, for example, is used both in

17 Europe and Australia?

18 A. Yes, at the time.

19 Q. At the time. All of this, of course, is at the time?

20 A. Mm-hmm (Yes).

21 Q. Yeah. Okay. And then the next heading is L ACE, L

22 Chubb. And I take it that L ACE stands for legacy ACE and L

23 Chubb stands for legacy Chubb?

24 A. Yes.

25 Q. And all of the applications on the page that we're

1061**1063**

1 looking at are legacy Chubb, right?

2 A. Yes.

3 Q. Now the next column is number of users. Agreed?

4 A. Yes.

5 Q. And that column is divided into two parts. On the left

6 side is the business users. And on the right side is the

7 technical users, agreed?

8 A. Yes.

9 Q. And so let's use CSI Express for example. This is

10 telling us that there are 500 business users and 3 technical

11 users for CSI Express, right?

12 A. Yes. So --

13 Q. That's right?

14 A. That's what it says.

15 Q. That's what it says. And so then if we go down, if we

16 look at that column, number of users in business, and we

17 just go down the column. We can line up the number of

18 business users with the different applications, right?

19 Agreed?

20 A. I don't know which line you are on.

21 Q. I was just speaking in general.

22 A. Okay. Thank you, Your Honor.

23 Q. Let's do DecisionPoint.

24 A. Okay.

25 Q. So here we have 1200 business users on DecisionPoint, or

1 is typically an application that runs towards the end of the

2 day or the end of a week or the end of a month.

3 Q. Right. And hence the name "batch"?

4 A. Batch.

5 Q. Exactly. So we were looking at TAPS, and here we have

6 technical users of 2, agreed?

7 A. That's what it says.

8 Q. And then let's go to premium booking corporate systems,

9 it has 10 technical users?

10 A. That's what it says.

11 Q. And if we go to application Canada, 350 business users?

12 A. Yes.

13 Q. And 3 technical users, agreed?

14 A. Yes.

15 Q. We go to Adapt-ABL for Europe/Australia, 525 business

16 users and 5 technical users, agreed?

17 A. That's what it says.

18 Q. Believe me. It's not my choice to do it this way, but

19 we will just do it.

20 And then EZER, business users 300, and technical

21 users 3?

22 A. That's what it says.

23 Q. Okay. So now let's go over to the next column,

24 complexity, number of rules, and this is a description of

25 whether the rules are complex, high, low or not, and the

1062**1064**

1 is it 1200 times 4?

2 A. No. It was 1200 --

3 Q. Agreed. All right. And then on the technical side is

4 5?

5 A. Yes.

6 Q. Yes. And then automated renewal process, on the

7 business side it says not applicable because it's a batch,

8 and on the technical side, it says there is 5 technical

9 users?

10 A. Yes.

11 Q. And then if we go to CUW, the business users is 1,000 --

12 I'm sorry -- it's 3,197?

13 A. Yes.

14 Q. And then the technical users is 60, right?

15 A. That's what it says.

16 Q. And then on the application IRMA, business users is 434,

17 434, right?

18 A. Yes.

19 Q. Technical users is 2, correct?

20 A. Yes.

21 Q. TAPS, Texas Action and Prevention System, this again is

22 a batch process, so no business users, and batch means what?

23 A. Batch is a term we use to describe a process, an

24 application that runs without the interaction with a human

25 being through a user interface, and to expand from there, it

1 number of rules that are being run in Blaze Advisor,

2 correct?

3 A. That is correct.

4 Q. All right. So if we go to CSI Express, its complexity

5 is high, and the number of rules is 8,300, correct?

6 A. Yes.

7 Q. If we go to, also part of CSI Express, the complexity is

8 high and the number of rules is 12,800?

9 A. Yeah. That was the ABL service.

10 Q. For the underwriting guidance at the time?

11 A. Yes.

12 Q. Before disablement it was 12,800, and high complexity?

13 A. Yes.

14 Q. For DecisionPoint, it's high complexity and the decision

15 services run to 2500?

16 A. Yes.

17 Q. The complexity is high and the number of rules is 3,410.

18 Agreed?

19 A. Yes.

20 Q. Then we go to CUW, and we have low complexity, right?

21 Agreed?

22 A. That's true.

23 Q. The number of rules is 680, right?

24 A. Yes.

25 Q. And IRMA, low complexity, and number of rules 460?

1065**1067**

1 A. Yes.

2 Q. And then TAPS, low complexity, number of rules 270,

3 right?

4 A. That's what the document says.

5 Q. Yep. And then premium booking, we have a high

6 complexity, and 5,460 rules, right?

7 A. Yes.

8 Q. And then for Evolution Canada, a medium complexity and

9 1,000 to 1500 rules, right?

10 A. Yes.

11 Q. And then for Adapt-ABL in Europe and Australia, medium

12 complexity, 1,720 rules?

13 A. Yes.

14 Q. And for EZER in Europe, medium complexity, 910 rules,

15 right?

16 A. That's what it says.

17 Q. So the next column is number of decision services, and

18 give me the definition of that, please?

19 A. Decision service fundamentally is how the rules were

20 being combined together for the execution.

21 Q. And then as that column is populated by numbers, what

22 does the 1 mean in contrast to a 3?

23 A. One way to describe it would be when you have lots of

24 rules, we are talking about thousands in many cases, and we

25 group them together. So is a group a 1 versus some other

1 that it is designated for. So if all told, one, two,

2 three -- so all told you have five RMAs for the applications

3 that are listed on the first page?

4 A. Yes.

5 THE COURT: Mr. Hinderaker, we're just after noon.

6 It sounds like you're at a convenient breaking point.

7 MR. HINDERAKER: I am, Your Honor. I finished the

8 first page.

9 THE COURT: All right. Very well. We will take

10 our noon break. Be back and ready at five minutes after one

11 o'clock.

12 THE CLERK: All rise for the jury.

13

14 (In open court without the Jury present.)

15 THE COURT: Everyone be seated, please.

16 Mr. Hinderaker, just going forward with this witness, we're

17 going to proceed in the vein of, I'm not going to publish

18 until you've moved for admission, just to be on the safe

19 side.

20 Ms. Godesky, why isn't this admissible as a

21 Rule 1006 summary of voluminous business records?

22 MS. GODESKY: My understanding is that this is not

23 a summary of voluminous business records. I do not think

24 that Chubb keeps in the regular course of business records

25 with the information reflected on P 517. It's my

1066**1068**

1 lines you have a 2 groups. We created 2 groups of those.

2 Q. And then the next column is the number of entry points

3 per service, and why don't you please define that?

4 A. Yeah, those were -- so service is an object that has,

5 contains all of these rules. So these object interact with

6 other objects. What we described so far is, we term, we

7 refer these to components in application. So the term

8 "entry points" is a point of integration.

9 Q. Okay. Thank you. And then on the last column on the

10 first page here, number of RMAs. Now an RMA is the rules

11 maintenance application that's part of Blaze Advisor?

12 A. Yes.

13 Q. Yes. And so like this is saying to us for

14 DecisionPoint, for example, there is, there is one RMA?

15 A. Yes.

16 Q. So the business people -- there is one RMA that the

17 business people can use to write rules into Blaze Advisor

18 relative to DecisionPoint?

19 A. Which, which in our case was the IT people were doing

20 it.

21 Q. Understood. And you chose to have IT people use the

22 rules maintenance application for that purpose?

23 A. That was the net result of our experience.

24 Q. All right. And so the number of RMAs we will know by

25 going down that column for each of the applications that is,

1 understanding that this information was hunted and gathered

2 from --

3 THE COURT: From Chubb's business records, right,

4 from its computer systems and the thing that it uses every

5 day of its existence to run its business, right?

6 MS. GODESKY: I think that's correct.

7 THE COURT: Okay.

8 MR. HINDERAKER: And as a point of information,

9 Your Honor, this same document is on their exhibit list as

10 175.

11 THE COURT: All right. Thank you, Mr. Hinderaker.

12 We're in recess.

13 (Lunch recess taken.)

14 Monday 2/27/23, afternoon session

15 * * *

16 1:05 p.m.

17 IN OPEN COURT

18 (JURY PRESENT)

19 THE COURT: Go ahead and be seated.

20 Mr. Hinderaker.

21 MR. HINDERAKER: Thank you.

22 BY MR. HINDERAKER:

23 Q. Sir, we're going to stay on this Exhibit 517.

24 A. Okay.

25 Q. Over the lunch hour I noticed that I had missed

1069**1071**

1 something on the first page. I just would like to go back
 2 to that for a moment.
 3 And if you go to the, if you go to the premium
 4 booking line --
 5 A. Yes.
 6 Q. -- and you go across to countries supported, I believe
 7 we mentioned the U.S.A., but this document shows it's U.S.A.
 8 and Canada, correct?
 9 A. That's what it shows.
 10 Q. Okay. Now we can turn to the second page.
 11 I take it this information was gathered from your
 12 organization's records wherever they were kept and then
 13 summarized on this document?
 14 A. So this data was, it was at a point in time analysis,
 15 and we looked at value sources starting from the servers
 16 where the software was running.
 17 Q. Thank you. So on the second page.
 18 Now, to read the second page, you have to have the
 19 first page in mind in that, like the call to the top row
 20 that's in light blue, corresponds to the preceding page for
 21 us to know that it's CSI Express, right?
 22 A. Yes.
 23 Q. Okay. So let's stay with CSI Express on the second
 24 page.
 25 The transaction processing column is divided into

1 renewal processing, and that's batch only, right?
 2 A. The third line, yes.
 3 Q. Okay. Now let's go to the commercial MMI. The top row
 4 is CUW. It is, CUW is both batch and realtime, correct?
 5 A. So you looking at the first one.
 6 Q. Yes, I am.
 7 A. CUW.
 8 Q. Yes.
 9 A. Batch. Sorry. Both.
 10 Q. It's both, right?
 11 A. Both. Both.
 12 Q. Yep, that's what I thought.
 13 And then under that we have IRMA, and that's
 14 realtime?
 15 A. Yes.
 16 Q. And under that we have TAPS, and that's batch, right?
 17 A. Yes.
 18 Q. And then if we go to corporate systems, the premium
 19 booking, that's batch?
 20 A. Yes.
 21 Q. And we go under that to Evolution Canada, that's batch?
 22 A. Yes.
 23 Q. And then we go to Adapt-ABL in Europe and Australia,
 24 that's batch, correct?
 25 A. Yes.

1070**1072**

1 two parts, batch/realtime and then the other is overlap, if
 2 both.
 3 So on CSI Express under batch/realtime it says
 4 both?
 5 A. Yes.
 6 Q. So that means that it processes transactions both in
 7 realtime and by batch?
 8 A. Yes.
 9 Q. Okay. And then the other half of that column where it
 10 says overlap, if both, well then of course the answer is
 11 yes?
 12 A. Yes.
 13 Q. The next line down or we go down from there, going to
 14 the first page the, SBU is commercial financial. And we
 15 look across to see what it's talking about, and now we're
 16 talking about DecisionPoint, correct?
 17 A. The second line, yes.
 18 Q. Yes. And so where it says transaction processing,
 19 batch/realtime, for DecisionPoint, it's realtime?
 20 A. Yes.
 21 Q. So then the next column overlap, if both, well it's not
 22 both. So it says and slash A, not applicable. Am I reading
 23 that right?
 24 A. Correct.
 25 Q. And then under the DecisionPoint we have automated

1 Q. And EZER is batch, correct?
 2 A. Yes.
 3 Q. Okay. So then let's go to the next large column,
 4 realtime transactions. Do you see that?
 5 A. Yes.
 6 Q. And that's divided into, I'd say, we'll call it three
 7 subparts for my purposes. All right?
 8 So let's go, the first is average number per
 9 month. So is that telling us the average number of
 10 transactions for the application per month?
 11 A. Yes. Related to that particular --
 12 Q. Application?
 13 A. -- line, application. Yes.
 14 Q. Exactly. So let's do it again. CSI Express is at the
 15 top. Average number per month of realtime transactions,
 16 7,500 to 1 million, right?
 17 A. Yes.
 18 Q. And then we go to DecisionPoint and we have, we have
 19 average number of transactions per month, and it's showing
 20 10,000, 50,000, 30,000 and 50,000. Am I reading that right?
 21 A. Yes.
 22 Q. So do we add that all up to get the total?
 23 A. In this case, yes.
 24 Q. And then we go down to CUW, realtime transactions,
 25 1.22 million per month, correct?

1073**1075**

1 A. Yes.

2 Q. And then under that is IRMA, realtime transactions

3 184,072?

4 A. Yes.

5 Q. And no information is reported on TAPS. And that's that

6 column, so in terms of information.

7 Let's go to maximum number of concurrent users.

8 A. Yes.

9 Q. So a concurrent user is what?

10 A. Number of users of the application that are using in

11 exact same time the application.

12 Q. Thank you. And for CSI Express it's 100?

13 A. Yes.

14 Q. And then for DecisionPoint it's 3 to 5, 3 to 5, 3 to 5,

15 3 to 5. So again I can add those all up.

16 A. Well, in this case it's 3 to 5 for the whole

17 application.

18 Q. Okay. Very good. And then we go down to -- everything

19 else is -- no more information on maximum number of

20 concurrent users.

21 So let's go to maximum processing time. Start

22 again with CSI Express. My eyes aren't so -- I wish they

23 were better, but is that saying 5S? Five seconds, what is

24 that saying?

25 A. Yeah, five seconds.

1 Q. So the number of transactions -- I'm sorry. Number of

2 transactions on -- on per job. So under the heading, Batch

3 Transactions, what does that mean "on per job"?

4 A. Per job, meaning one execution of a batch is called a

5 job.

6 Q. Oh, good. And so the number of transactions in a job

7 for CUW is 150,000?

8 A. Yes.

9 Q. Okay. Nothing for, and we pick up again with automated

10 renewal, right?

11 A. Yes.

12 Q. And the number of transactions per job is 10,000?

13 A. Yeah. The first line, yes.

14 Q. And then on the second line is 500 to 1,000?

15 A. Yes.

16 Q. And then on CUW, the transactions per job for batch is

17 32,000, correct?

18 A. Yes.

19 Q. And we go to TAPS, and the number of jobs, batch per job

20 is 8,456?

21 A. Yes.

22 Q. And then we'll go to premium booking, and the number for

23 transactions per job is 482, right?

24 A. Yes.

25 Q. And that fills out that column.

1074**1076**

1 Q. Five seconds?

2 A. Yeah.

3 Q. Maximum processing time. Then we go to DecisionPoint,

4 10 seconds, 2 seconds, 2 seconds, 5 seconds?

5 A. Yeah, that's for one realtime transaction --

6 Q. Okay.

7 A. -- interaction.

8 Q. I see. So if I go across, there's a realtime average

9 per month, 10,000; maximum concurrent users, 3-5; maximum

10 processing time 10 seconds?

11 A. Yes, for one transaction.

12 Q. One transaction. And I would do the same on

13 DecisionPoint across the line to understand that, right?

14 A. Yes.

15 Q. Okay. And then, then under CUW, maximum processing

16 time, it says the longest recorded was 37 seconds. Accurate

17 to the best of your knowledge, right?

18 A. That's what we were able to capture.

19 Q. And then on IRMA, maximum processing time, it says

20 1.794. 1.794 what, do you know?

21 A. Seconds.

22 Q. Seconds, okay. Good.

23 Now let's go to batch transactions. That column

24 is also divided into three parts. Agreed?

25 A. Yes.

1 So now let's go to time window under batch

2 transactions.

3 So for CSI Express -- well, first time window

4 means what?

5 A. The execution window --

6 Q. Okay.

7 A. -- for the entire batch.

8 Q. Beginning to end. Beginning to end?

9 A. Beginning to end for a job.

10 Q. For a job, yeah.

11 So time window, CIS express varies from 20 minutes

12 to multiple days. Have I read that right?

13 A. Yes.

14 Q. The next time it's applicable is, automated renewal runs

15 at night for 4-6 hours is one entry, and then runs at night

16 30-minute to 1 hour is another entry, right?

17 A. Yes.

18 Q. For CUW it runs 2:30 a.m. to 4:30 a.m.?

19 A. Yes.

20 Q. And then for TAPS it runs from 14:02 to 14:28, right?

21 A. Yes.

22 Q. So in Minnesota time that's two minutes after 2:00 to

23 28 minutes after 2:00, right?

24 A. It --

25 Q. You're using military time?

1077**1079**

1 A. Yes. 28 minutes after 2:00 p.m.
 2 Q. And then premium booking is overnight. Evolution is
 3 overnight, correct?
 4 A. Overnight, yes.
 5 Q. And then Adapt-ABL is every morning for the European
 6 zone and overnight for Australia, correct?
 7 A. Yes.
 8 Q. And then for EZER in Europe it's overnight, right?
 9 A. Yes.
 10 Q. All right. So the third column in batch transactions,
 11 run frequency. And if you tell us what that means?
 12 A. It means when is the batch run.
 13 Q. Okay.
 14 A. Could be daily, monthly, weekly.
 15 Q. Got it. So CSI Express, run frequency, multiple type of
 16 batches, on average twice per week. Agreed?
 17 A. Yes.
 18 Q. For automated renewal, it says monthly openly or monthly
 19 and daily?
 20 A. Yeah, because there are two type of batches.
 21 Q. Got it.
 22 And then for CUW, it's nightly?
 23 A. Yes.
 24 Q. For TAPS, it's monthly?
 25 A. Yes.

1 Q. Got it. So CSI Express has 140, the number of
 2 attributes?
 3 A. Yes.
 4 Q. And DecisionPoint has 120, right?
 5 A. As you can see, we broke it down into four different
 6 groups because there were different set of rules, each one
 7 requiring different number of attributes. That's why you
 8 have these four lines.
 9 Q. All right. That's why it says 120, 140, 60 and 250?
 10 A. Yes.
 11 Q. All right. Thank you.
 12 And then for automated renewal, there's a, one
 13 line is 140 and the other line is 120?
 14 A. Yes.
 15 Q. For the same reason?
 16 A. Same reason.
 17 Q. And then for CUW, 125, right?
 18 A. Yes.
 19 Q. And for IRMA, 60, right?
 20 A. Yes.
 21 Q. And for TAPS, 60, right?
 22 A. Yes.
 23 Q. And then we go to premium booking, and that's 300,
 24 right?
 25 A. Yes, 300.

1078**1080**

1 Q. For premium booking, daily?
 2 A. Yes.
 3 Q. For Evolution, daily once?
 4 A. Yes.
 5 Q. Evolution Canada for Adapt-ABL, daily twice, right?
 6 A. Yes.
 7 Q. And for EZER, daily once?
 8 A. Yes.
 9 Q. Okay. And the next column is transaction payload, and
 10 that's divided into two. One of them is type. And all of
 11 them have -- the type for all of them is Java?
 12 A. That's correct.
 13 Q. And that's a certain kind of software platform?
 14 A. So the rules that you define in Blaze gets translated
 15 into a programming language. The one we chose or the one
 16 that Federal Insurance chose was called Java.
 17 Q. Thank you. And then transaction payload. And then you
 18 have the approximate number of attributes. And an attribute
 19 means what?
 20 A. A data item.
 21 Q. I'm sorry. A what?
 22 A. A data item.
 23 Q. Data item?
 24 A. Yes. Could be, I don't know, premium number, a premium
 25 figure or --

1 Q. And then Evolution Canada, 120?
 2 A. Yes.
 3 Q. And then we're into Adapt-ABL for Europe/Australia, 140,
 4 right?
 5 A. Yes.
 6 Q. And for EZER in Europe 140, right?
 7 A. Yes.
 8 Q. And then the last column is number of sandboxes needed.
 9 What is a sandbox?
 10 A. A sandbox is a term we use in IT to describe a test
 11 environment.
 12 Q. Okay. And for every, for every --
 13 A. Application.
 14 Q. -- line that's filled in, it's one?
 15 A. One per -- yeah. An application required a sandbox.
 16 MR. HINDERAKER: Okay. Good.
 17 Your Honor, I move again for the admission of 517
 18 as a business record or as a Rule 1006 summary of their
 19 business records.
 20 MS. GODESKY: We object for the reasons discussed
 21 and also the second sentence of Rule 1006.
 22 THE COURT: The objection is overruled. The
 23 exhibit is received.
 24 BY MR. HINDERAKER:
 25 Q. Now, Mr. Ghislanzoni, let us move on to -- if you would

1081**1083**

1 look at Exhibit 518.
 2 A. 518.
 3 Q. 518.
 4 A. Okay.
 5 Q. And you are also familiar with this document --
 6 A. Yes.
 7 Q. -- correct? And I understand -- and this document to
 8 the best of your knowledge was made about April or maybe
 9 March, March, April, 2019, correct?
 10 A. So this document, which is similar to the one we just
 11 looked at.
 12 Q. It is.
 13 A. Yeah. My recollection is, was produced towards the end
 14 of 2018.
 15 Q. Let me see if -- would you look at the end of the -- the
 16 back of that binder there's your deposition transcript.
 17 A. Okay.
 18 Q. And I'm just seeing if that would refresh your
 19 recollection. If you go to page 101.
 20 A. Sure.
 21 Q. I'm sorry. Let me know when you are there.
 22 A. Page 101, yes.
 23 Q. Page 101. And so you were talking about Exhibit 406,
 24 and then you said that was before 503 which is the one we
 25 are talking about now.

1 BY MR. HINDERAKER:
 2 Q. And if we look at Exhibit 518, sir, a lot of the
 3 information -- information being the same, but look at
 4 what's different. If we go to Adapt-ABL, do you agree with
 5 me that in the later document, 518, Adapt-ABL shows both for
 6 the European zone and Australia, right?
 7 A. Same as before.
 8 Q. Same as before. Just different terminology. So on 518
 9 for Adapt-ABL, you said writing guidance for EUZ, that's the
 10 European zone and Australia, and then 517 is, 517 doesn't
 11 say underwriting guidance, does it?
 12 A. No, it doesn't.
 13 Q. Well, 518 is in evidence, and we can compare those two
 14 exhibits in terms of their differences, not in the same
 15 level of detail we did before, but 518 has as a header: Has
 16 a header application as before, but now it has a header
 17 Blaze Rules Capability, right?
 18 A. Yes. I remember I said in this column to explain the
 19 main capability that was provided through the rules.
 20 Q. Right. And then the complexity and number of rules,
 21 realtime transactions, month average per day, batch, that's
 22 likely information from the earlier exhibit?
 23 A. Complexity of rules, yes.
 24 Q. Yeah. Okay. So 518 is useful in terms of new
 25 information because it has the Blaze rules capability as

1082**1084**

1 And the answer is, "So when did you receive 553,"
 2 which is the exhibit we are talking about now is as trial
 3 Exhibit 518. And at page -- you say, "I believe it was
 4 maybe March or April 2018."
 5 And the answer March, April -- I'm sorry. March
 6 or April 2019. And the answer is, "March, April 2018, so at
 7 that point in time."
 8 Does that refresh your recollection it's in the
 9 spring of March, April 2018?
 10 A. Yeah, what I remember is we started creating this view
 11 at the end of 2018. We might as well possibly have refined
 12 the view at the beginning of 2019.
 13 Q. Fair enough. And then one of the things that's in
 14 Exhibit 51 -- let me. Hang on.
 15 And Exhibit 518 was prepared in the same general
 16 process as the earlier exhibit?
 17 A. Yeah, the foundation in terms of data gathering was the
 18 same.
 19 Q. And to the best of your knowledge, Exhibit 518 is an
 20 accurate reflection of the information in your organization
 21 at the time?
 22 A. To the best of my knowledge, yes.
 23 MR. HINDERAKER: Your Honor, I offer Exhibit 518.
 24 MS. GODESKY: We have the same objections.
 25 THE COURT: Overruled. 518 is received.

1 part of, as part of its expression. Agreed?
 2 A. Sorry. Could you repeat the question?
 3 Q. 518 has the heading Blaze Rules Capability, and then
 4 that information is filled in?
 5 A. Yes.
 6 Q. Okay. Thank you.
 7 Would you go to Exhibit 156 in the notebook.
 8 A. 156.
 9 Q. Thank you. And I believe this is in evidence but the
 10 subject is ChEAR Application and Technology Stack Summary.
 11 Do you see that?
 12 A. Legacy Chubb application summary.
 13 Q. Right. And then the attachment is legacy Chubb
 14 application summary. Agreed?
 15 A. That's what it says.
 16 Q. Okay. I would rather not walk you through this
 17 document. I would like to only know from your expertise and
 18 familiarity to how to read it correctly. All right?
 19 And so, for example, if in the attachment I go to
 20 the second page, and I was to find the, near the top
 21 third -- there we go -- where it says the technology Blaze
 22 Advisor, and then it says preferred primary, 7.1 and
 23 leverage.
 24 I just want to know from -- and I think from your
 25 earlier testimony it is, but I just want to know that when I

1386**1388**

1 to sell that insurance by the state, the state of Virginia,
 2 the state of Massachusetts, the State of Minnesota.
 3 So the independent agent, if they decide that they
 4 desire to make their career by having an insurance-selling
 5 business, they go to the State, and they take tests, and
 6 they acquire a license to sell. Then they go out and they
 7 establish relationships with insurance companies.
 8 When I entered into the industry in the late
 9 1970s, it wasn't unusual for an independent agent to have
 10 10, 12 companies in its arsenal of people for which it had a
 11 license to sell insurance. Nowadays, that number is
 12 probably a little closer to five because the agents started
 13 to realize it costs money to have the insurance license for
 14 that company.
 15 But the reality is, the real bottom line here is
 16 the independent agents are independent businesses. They run
 17 their own business. They're licensed by the state. They
 18 acquire that themselves. And then they go out, and they
 19 market themselves to the insurance companies.
 20 Insurance companies say, yes, we want to do
 21 business with you, and they have a contractual agreement
 22 that allows the independent agent to sell on behalf of the
 23 company.
 24 Q. But the independent agent doesn't have to only sell on
 25 behalf of one company. He can sell on behalf of as many

1 of policies, so let's go back to the flower shop. Okay? I
 2 want to write flower shops. Okay?
 3 Hey, front line underwriting, we want to write
 4 flower shops, but we don't want you to write flower shops
 5 that have five delivery vehicles. We want the small guys.
 6 We want somebody that only has one or two vehicles.
 7 All of that has to take place in the underwriting
 8 process. Sometimes executed systemically and sometimes
 9 executed by humans.
 10 Q. Okay. And "systemically," did you mean by technology?
 11 A. Yes. Yes.
 12 Q. And I think that -- I go slow on the natural, but I
 13 think you have to go slow on the unnatural. Slow down a
 14 little bit.
 15 A. I'll do my best, sir.
 16 Q. All right.
 17 A. As Mr. Pandey pointed out, he loves technology. I might
 18 be guilty of the same thing as it respects property casualty
 19 insurance.
 20 Q. All right. Is it fair to say that the underwriter is
 21 the key person in this process of selling insurance?
 22 A. It is fair to say that the underwriter is the key -- the
 23 front line underwriter is the key person in this.
 24 Q. Okay. So that's the -- that's having the steps of
 25 selling in mind. I want to go to a different topic being

1387**1389**

1 companies as he has agreements with?
 2 A. Correct. As I mentioned, and nowadays it looks to be
 3 about five.
 4 Q. Okay.
 5 A. And that creates an interesting dynamic in the
 6 relationship because all of the insurance companies know
 7 that the independent agent has a portfolio of companies
 8 available, and so there's a -- there is a goal in that front
 9 line underwriting function to establish for the agents you
 10 select almost a loyalty, if you will, a preference for doing
 11 business with each other.
 12 Q. And then let's turn to the third, say, person involved
 13 in the process of selling insurance, the underwriter of the
 14 insurance company. I think at this point we're talking
 15 about front line underwriting?
 16 A. We are.
 17 Q. And so what is the role, if you will, of the -- well,
 18 let me ask you this: Is it possible to sell insurance
 19 without front line underwriting?
 20 A. No.
 21 Q. Not whether you use technology or not, but you have to
 22 underwrite to sell insurance?
 23 A. Yes, because the definition of underwriting is within
 24 the -- it's where the risk appetite and the type of policies
 25 the company wants to write, and then inside of those types

1 what we've heard defined, I guess, as a policy
 2 administration system. Turn to that subject.
 3 With or without technology, can insurance
 4 companies sell insurance without a policy administration
 5 system?
 6 A. In today's current environment, it could be done, but
 7 you can't be price-competitive because the expenses it would
 8 cost to do that would drive your price way above the point
 9 where you could sell in the marketplace.
 10 Q. Okay. Fair to say regardless of what the particular
 11 technology is, technology is used in the policy
 12 administration system's process?
 13 A. I would say that differently. Policy -- policy
 14 administration system is a technology or a collection of
 15 technologies used to administer the selling of insurance
 16 process in the underwriting process.
 17 Q. Thank you. I'm sorry to talk over you.
 18 And that was your experience -- and that was true
 19 in your experience in the industry?
 20 A. Yes, across all 44 years.
 21 Q. So let's go to the steps in the process of selling and
 22 underwriting, just to walk us through the application. We
 23 don't have to spend any more time than necessary, but let's
 24 spend, as you might say, all the time that is necessary.
 25 Describe for us the application step in the

1398**1400**

1 issued. There is no paper. There is no dec page. But
 2 coverage exists. That's the binding process.
 3 Q. So when I trade in my car to the dealer and have a
 4 different car but I want to be insured on my ride home, I
 5 call my agent, give him the information. The agent says,
 6 okay, you're bound, you have insurance?
 7 A. That's a good understanding.
 8 Q. And then separate from bound is another step, policy is
 9 booked and issued. What does that mean?
 10 A. These are two processes that take place simultaneously.
 11 So the policy is bound. The underwriter has the
 12 communication. The applicant has accepted the policy.
 13 Well, now -- this is an oversimplification. A
 14 button has to be pushed which says issue the policy. Right?
 15 The underwriter pushes that button, and now what insurance
 16 technology people would call interfaces, interfaces start
 17 the process.
 18 One of the processes is an interface communication
 19 out to whatever I call this fulfillment, but who is going to
 20 print the dec page. Right? Who's going to stuff it into an
 21 envelope. Today that's a little bit of a misnomer because
 22 many people receive their issued policy documents
 23 electronically.
 24 But it has to be issued, and a copy, electronic or
 25 paper, of the policy and everything that comprises the

1 but fairly radical example would be that flower shop that
 2 all of a sudden starts selling fireworks, the underwriter
 3 would want to know that.
 4 Q. How would the insurance company know that the flower
 5 shop has changed business to fireworks?
 6 A. Well, the independent agent will -- the policyholder,
 7 the named insured, would communicate to the independent
 8 agent, hey, I've got a new business now. I've got different
 9 inventory. I need to change the coverages.
 10 The independent agent would communicate to the
 11 underwriters, and red flags would flip up.
 12 Q. Okay. And again, it's technology -- in this day and
 13 age, it's technology that does that.
 14 A. For the most part, yes.
 15 Q. Yes. And then policy renewal. Maybe it's
 16 self-explanatory, but in the whole process, would you
 17 describe that, please?
 18 A. Certainly. The preponderance, but not all, of policies
 19 today carry an annual policy term. So when you have a quote
 20 that is converted to a policy, it's considered a new
 21 business policy. That's how the insurance industry
 22 categorizes it.
 23 Once that policy begins to approach the expiration
 24 date of the policy, and if my memory is correct,
 25 Mr. Pandey's description of this renewal process was a

1399**1401**

1 policy has to go to the interested parties. So the now
 2 named insured is going to receive a copy of the policy. You
 3 move from applicant to named insured.
 4 The agent, the independent agent, is going to
 5 receive a copy. If there is a financial institution
 6 involved, so if you think about that flower shop and that
 7 flower shop actually owns the physical property, they're not
 8 renting, there's probably a mortgage, a financial loan on
 9 that. And the mortgage company is going to want to be named
 10 on the policy, and they're going to want to get a copy of
 11 the policy.
 12 That's the issued process. Dec page, policy
 13 language, statutory endorsements.
 14 Q. And in your experience, technology is used inside of a
 15 policy administration system to assist in that part of the
 16 process as well?
 17 A. Yes. The policy administration system is the technology
 18 that is driving all of these processes.
 19 Q. Policy monitoring, what is that?
 20 A. Once a policy comes into existence, it is a concern of
 21 the front line underwriter if significant, meaningful,
 22 changes take place to the policy in the -- in the middle of
 23 the term.
 24 So they have usually systems checks, rules in
 25 place that say, hey, if X or Y or Z, an easily understood

1 90-day ahead of time window, different products, different
 2 companies have a different window. It might be 95. It
 3 might be 82. But a window exists.
 4 That window is going to kick off, and the
 5 evaluation of whether the insurance company wants to offer a
 6 renewal will take place. And if they decide the answer to
 7 that is yes, they will send out a renewal offer.
 8 Now, the renewal offer will look a whole lot like
 9 a policy, a new policy with a second policy term, but the
 10 reality is, it doesn't become a policy unless it is
 11 accepted, and the acceptance is generally deemed to be the
 12 receipt of premium.
 13 Q. Okay. And in the -- and in your experience in the
 14 industry, how valuable -- how valuable to the insurance
 15 company is its ability to convert existing policies into
 16 renewal policies, or maybe I could say another way: How
 17 valuable is the overall percentage of renewals to an
 18 insurance company?
 19 A. Renewals are incredibly important to an insurance
 20 company, and you'll see the phrase "renewal retention,"
 21 because there's just not enough opportunity in the market of
 22 people looking for a new insurance policy to accomplish the
 23 written premium objectives that companies have if they don't
 24 hold on to or if they're not good at holding on to their
 25 renewals.

1462**1464**

1 A. Mr. Hinderaker, the court record is important. Can I
 2 ask you to read the last two sentences back? Okay. Go
 3 ahead, sir.
 4 Q. Don't worry about it.
 5 With respect to the applications that defendants
 6 had that use Blaze Advisor, one of them is CUW-IM?
 7 A. Yes.
 8 Q. IM being Inventory Management?
 9 A. Yes, Commercial Workstation Inventory Management.
 10 Q. Is that one of the -- is that an application that would
 11 fall in the value chain of workflow routing and
 12 orchestration?
 13 A. Yes. Inventory management is, in fact, executing that
 14 process I talk about, making sure the request gets to the
 15 right party.
 16 Q. Okay. And by "right party," are you saying the right
 17 underwriter?
 18 A. Yes, if it is going to be human underwriting.
 19 Q. Yes. Let's use human underwritten for a moment.
 20 A. So then the answer to the question is yes, and it's
 21 going to get it to the right underwriting person.
 22 Depending upon the complexity of the transaction, that
 23 might be a special underwriting assistant. It might be
 24 a -- it might be an underwriter. It's going to be somebody
 25 in the underwriting department with the authority and

1 this element of value called predictive analytics.
 2 A. Certainly. This takes place in two points. One of
 3 their predictive -- and I'm going to use the phrase
 4 "predictive modeling." That's probably a little more
 5 familiar phrase with people.
 6 The first point where predictive modeling use
 7 Blaze Advisor was applied is a policy capability called
 8 profitability model.
 9 Q. Profitability Indicator?
 10 A. I'm sorry. Profitability Indicator. I apologize.
 11 Profitability Indicator is a computer model using
 12 Blaze Advisor that created a prediction on profitability,
 13 as the name says, based on a given price point. And then
 14 the underwriter could look at that and say, oh, well, by
 15 golly, the price point needs to go up X, 5 percent. Or the
 16 Profitability Indicator could say, hey, by golly, you don't
 17 need all this money, you can go down 5 percent. Okay? And
 18 the 5 percent is just for examples. Okay?
 19 Q. Sure.
 20 A. So Profitability Indicator is a predictive modeling
 21 application. It used Blaze Advisor, and it was deployed
 22 into CSI Express.
 23 Q. All right. And how about CIS Claims? Is that involved
 24 in the predictive analytics category for value?
 25 A. It does. CIS Express was a predictive model used

1463**1465**

1 authorization to execute that transaction.
 2 Q. Was it also used to direct the workflow and the
 3 application to the underwriter with the appropriate
 4 expertise to address -- the issue being to address the
 5 policy for underwriting?
 6 A. In the specific case of defendant, yes.
 7 Q. Okay.
 8 A. There are -- there are insurance companies out there
 9 that don't really leverage that concept, but in this case,
 10 that is accurate.
 11 Q. The defendants did?
 12 A. The defendants did.
 13 Q. Were they also able to, with this CUW-IM, I'll call it,
 14 extend the day?
 15 A. Yes. Yes. Because if you have a submission of a
 16 request for policy that arrives at four o'clock in, just
 17 arbitrarily speaking, Boston, Eastern time, and the agent
 18 has communicated, I really need input on this by the close
 19 of business today, well, that's only one hour. But if you
 20 had that expertise on the West Coast, now you take 5:00
 21 p.m. and you extend it out to 6:00, 7:00- you extend it to
 22 8:00 p.m.
 23 Q. Let's go now to number ten, predictive analytics of --
 24 did -- well, if you would describe for us how the
 25 defendants used Blaze Advisor applications with respect to

1 primarily by the actuarial sciences folks --
 2 Q. We're talking about CIS Claims.
 3 A. I'm sorry. I'm sorry. CIS Claims is a predictive
 4 model used in the actuarial sciences function. And what
 5 it's doing is it's taking a hindsight view of policies, and
 6 it's recalculating the proposed premium for it.
 7 Q. All right.
 8 A. Okay? And then that proposed premium, it could be spot
 9 on, it could be exactly right, it can be too little, oh, my
 10 goodness and we've got to adjust our pricing process, or it
 11 could be too much and, again, we would have to adjust our
 12 pricing process.
 13 Q. Okay. Let's go to another slide that you reviewed,
 14 another document. This is Business Rules Situation
 15 Overview, and we're going forward in time to May 2014.
 16 This is a document that you reviewed as part of your
 17 analysis in forming your opinions?
 18 A. Yes.
 19 Q. And -- oops. And this document has the Donald Light
 20 quote that we saw before.
 21 A. Yes, it does.
 22 Q. So Chubb & Son continues to reference that as it's
 23 internally talking about Blaze Advisor.
 24 A. Agreed.
 25 Q. And then we've seen what drives the business value.

<p style="text-align: right;">1502</p> <p>1 THE COURT: Counsel, approach, please.</p> <p>2</p> <p>3 (In open court with the Jury present.)</p> <p>4 THE COURT: Please put that back up. Thank you.</p> <p>5</p> <p>6 (Side-bar discussion.)</p> <p>7 THE COURT: Sorry, but the second to the last</p> <p>8 bullet point on that slide refers to the cost of basically</p> <p>9 replacing and getting the application new. I want to make</p> <p>10 it clear, you're talking about the CSI Express application.</p> <p>11 MR. HINDERAKER: I am.</p> <p>12 THE COURT: Okay. I just wanted to make sure, as</p> <p>13 opposed to --</p> <p>14 MR. HINDERAKER: Not the whole schmiel.</p> <p>15 Application by application. There will be a couple other</p> <p>16 instances of that, but it's application by application.</p> <p>17 THE COURT: And the applications we're</p> <p>18 referencing are the applications of Chubb.</p> <p>19 MR. HINDERAKER: Only, yes.</p> <p>20 THE COURT: Okay. I just wanted to make sure.</p> <p>21</p> <p>22 (In open court with the Jury present.)</p> <p>23 BY MR. HINDERAKER:</p> <p>24 Q. In my view, this is important information, and I'm also</p> <p>25 trying to think about the most efficient way to convey the</p>	<p style="text-align: right;">1504</p> <p>1 at Chubb and that product development function I -- product</p> <p>2 management function I spoke to can take a book of business</p> <p>3 or a product and it can take all of that -- all of those</p> <p>4 policies, and it can change rules and parameters and get a</p> <p>5 result back that says, hey, if you do this, this is what we</p> <p>6 expect to happen, which is very powerful.</p> <p>7 And the last point I will make -- the last two</p> <p>8 points I'll make is, this is one of the places where the</p> <p>9 predictive modeling capability turned into Profitability</p> <p>10 Indicator is applied, and it used Blaze 7.1.</p> <p>11 Q. Okay. Then let's do a similar approach with Automated</p> <p>12 Renewal Processing. We'll combine both ARP-1 and ARP-2.</p> <p>13 From the documents and your review, if you would explain</p> <p>14 for us the significance of the bullet points you put on</p> <p>15 this slide.</p> <p>16 A. Certainly. So with the goal for straight-through</p> <p>17 processing and the goal to improve speed and the goal to be</p> <p>18 easier -- I'm sorry. I apologize.</p> <p>19 The first goal being straight-through processing;</p> <p>20 the second goal being improved speed; the third goal being,</p> <p>21 it would be easier to do business with, using Blaze Advisor</p> <p>22 7.1, defendant built two renewal processing projects. They</p> <p>23 deployed ARP-1, when ARP-1 was just simply a</p> <p>24 categorization. Here is a policy's risk characteristics.</p> <p>25 It fits into high touch, the underwriter has to do this.</p>
<p style="text-align: right;">1503</p> <p>1 information. So I'm suggesting, Mr. Whitener, if -- using</p> <p>2 this slide, if you could speak to the bullet points that</p> <p>3 you have put on the slide regarding the CSI Express</p> <p>4 application, and tell us in your view the significance at</p> <p>5 the defendants.</p> <p>6 A. Certainly. CSI Express is the policy administration</p> <p>7 system for the specialty products of defendant. You will</p> <p>8 notice in the -- in the second bullet point that we note</p> <p>9 from defendant documentation that they have 113 of those</p> <p>10 specialty products. So CSI Express is doing the policy</p> <p>11 processing, it's doing the new business, the quotes, the</p> <p>12 renewals, the terminations. It's executing -- or managing</p> <p>13 the execution of the "bind, book, issue" process for these</p> <p>14 products.</p> <p>15 CSI Express is the named application, computer</p> <p>16 system in the 2006 RFI, requesting the information about</p> <p>17 solutions. There is a lot of other information on here.</p> <p>18 Let me highlight just one or two things, and I'm going to</p> <p>19 look at the slide to do this, because I don't remember the</p> <p>20 details.</p> <p>21 Q. Please look.</p> <p>22 A. Probably the most important point here is the fact that</p> <p>23 it supports Automated Renewal Processing, so that's through</p> <p>24 two projects, ARP-1 and ARP-2. It has a simulation tool in</p> <p>25 it, a what-if, so that the corporate underwriting process</p>	<p style="text-align: right;">1505</p> <p>1 Low touch, maybe somebody else can do it, an underwriting</p> <p>2 assistant. And no touch.</p> <p>3 But with ARP-1 even though it categorized it no</p> <p>4 touch, the system still wouldn't issue the renewal. I</p> <p>5 mean, a -- a minor, minor amount of human interaction was</p> <p>6 required. When they flushed out and implemented and</p> <p>7 deployed ARP-2 now in that no-touch category, that minor</p> <p>8 amount of button-pushing was no longer required.</p> <p>9 The goal that was stated in the documents was to</p> <p>10 eventually get to 90 percent of the renewals going through</p> <p>11 straight-through processing within three years. It's a --</p> <p>12 it's a learning process. It's a step-by-step process. So</p> <p>13 you would go in, and if you had stuff that categorized at</p> <p>14 high touch, you would look at it, and say, anything we can</p> <p>15 do with the rules.</p> <p>16 If it were low touch, you would now be looking</p> <p>17 at, okay, what can we do that might turn more of those into</p> <p>18 low touch. So it is an iterative process, if you'll allow</p> <p>19 me that phrase.</p> <p>20 Q. And then no touch would be characterized as</p> <p>21 straight-through processing?</p> <p>22 A. Yes. No touch and straight-through processing mean the</p> <p>23 same thing.</p> <p>24 Q. And in your review of the defendants' documents, did</p> <p>25 you see where they were able to change the renewal rules</p>

1522**1524**

1 Q. Do these utility applications -- although not being
 2 policy administration systems, do they connect to the
 3 selling of insurance?
 4 A. Absolutely.
 5 Q. So at the defendants' utility applications were
 6 commercial -- are these the utility applications at the
 7 defendants?
 8 A. Yes.
 9 Q. We have spoken about CUW-IM, Broker Site in Canada. We
 10 will speak more about Exari in Europe. We haven't really
 11 addressed that. And we've talked about CIS Claims.
 12 So the Blaze Advisor function at Commercial
 13 Underwriter Workstation. That is what it was?
 14 A. Yes.
 15 Q. And I think we're spoken about that.
 16 A. I agree.
 17 Q. Okay. And then Brokersite, we haven't really spoken
 18 about that, client information access portal for brokers.
 19 How did Brokersite use the Blaze Advisor function?
 20 A. It is a tool made available to the independent agents
 21 and brokers to discover information about their
 22 policyholders. So if -- using a very, very simple example,
 23 if the business calls the independent agent and broker and
 24 says, when is my next premium due? In this deployment and
 25 in this function, the independent agent would go to the

1 your review of the documents, was it used by 6,000 users in
 2 the United States and Canada?
 3 A. Based on the documents, yes.
 4 Q. You had the bullet point, If CUW Inventory Management
 5 is down and work orders cannot be created or reviewed, what
 6 did you see from the documents that was the consequence of
 7 CUW-IM being down?
 8 A. I believe the direct words of the document, and I
 9 believe it here is the -- there was little to no "bind" --
 10 "bind, book, issue" taking place. This is the deployment
 11 to -- for inventory management, and so inventory management
 12 makes sure that any individual participant in the
 13 underwriting process, it makes sure that their in-box does
 14 not -- in-box of "bind, book, issue," in-box of any other
 15 type of underwriting work, be it underwriting endorsements
 16 or underwriting renewals, it's making sure that's what's in
 17 their in-box is within their defined capacity. And if it
 18 does not, taking that work and getting it into some other
 19 similar skill set person whose in-box can absorb the work.
 20 Q. And if that can't be done, then the work doesn't get
 21 done?
 22 A. If that can't be done, the work doesn't get done.
 23 Q. You have here that commercial -- Chubb Commercial
 24 Insurance processes over 5 billion dollars worth of
 25 business with CUW-IM?

1523**1525**

1 Brokersite, look up that policy and say, oh, look, you have
 2 a thousand books due on August the 1st.
 3 Q. This is an ease of doing business benefit?
 4 A. Correct.
 5 Q. Exari, data capture and document generation. What was
 6 that?
 7 A. Exari never deployed into production but built using
 8 Blaze Advisor, is a use of Blaze Advisor to create an
 9 interview tool to walk someone through an interview
 10 process, an agent and broker, or potentially a customer,
 11 asking them questions, and then the application Exari is
 12 going to fill out paperwork based on those answers.
 13 Q. For the purpose of selling the insurance policy?
 14 A. Agreed.
 15 Q. And then CIS Claims, claims categorization, I think I
 16 could use a little better understanding of what that means.
 17 A. CIS Claims is the predictive modeling use that looks
 18 back at information and says, did we get the price right?
 19 So when you think about categorization, really, there are a
 20 couple, right? There is, I got it right, or I didn't get
 21 it right, and if I didn't get it right, I missed by --
 22 Q. Okay. Got it. Understood.
 23 Now let's go through each of them in a little
 24 more detail. Commercial Underwriting Workstation Inventory
 25 Management, this -- in terms of these bullet points, from

1 A. It does.
 2 Q. Is that on an annual basis or what time frame?
 3 A. No. That is annually.
 4 Q. You also have on here that there were 1.22 million
 5 transactions per month. That was CUW-IM?
 6 A. Correct.
 7 Q. And some of these other bullet points we've spoken to,
 8 it uses Blaze Advisor 7.1?
 9 A. It does.
 10 Q. And then you have the estimated cost to purchase or
 11 redevelop CUW at between 5 and 10 million dollars?
 12 A. Yes. That's from the same data source as before.
 13 Q. Same data source as before, this Duff & Phelps?
 14 A. Correct.
 15 Q. Let's go to Brokersite. We've spoken about it a bit.
 16 So the interface between Brokersite and Evolution was what,
 17 as you saw from the documents?
 18 A. The Blaze Advisor is used in Brokersite.
 19 Q. Mm-hmm (Yes).
 20 A. And it participates in that -- in that interface. And
 21 as I mentioned before, Brokersite's job is to get
 22 information back to the agent and the broker as it relates
 23 a specific policy, suite of policies, customer.
 24 Q. And as you've already said, the Canadian application
 25 called Evolution used Blaze Advisor?

1570**1572**

1 THE CLERK: All rise for the jury.
 2 (Jury exits.)
 3
 4
 5 (In open court without the Jury present.)
 6 THE COURT: See you at ten to 1:00.
 7 (Lunch recess.)
 8 Wednesday Afternoon Session of Fair Isaac versus Federal
 9
 10 12:56 p.m.
 11 IN OPEN COURT
 12 (JURY NOT PRESENT)
 13 THE COURT: All right. A housekeeping matter,
 14 just so you know, we may -- well, we'll just get going.
 15 I'm going to lay down some guidance for the
 16 parties with respect to Mr. Waid's testimony and tell you
 17 what I see in the demonstrative slides, and then there's a
 18 group of slides I have a question about.
 19 So just by way of general guidance -- and,
 20 Mr. Waid, you need to be heads up on this too.
 21 During your testimony you can't use the phrase
 22 "hypothetical negotiation." You can be asked and you can
 23 respond to questions about negotiating a license that is
 24 four years in duration.
 25 I'm going to prohibit counsel from using the

1 THE COURT: But how is -- given that the court
 2 has found no territorial restriction in the license, and
 3 they are not a third party, so what's the, why is that
 4 ten-year period at issue?
 5 MS. GODESKY: I am under the impression that they
 6 are -- you're asserting a breach of contract claim.
 7 THE COURT: Okay.
 8 MS. GODESKY: Based on --
 9 THE COURT: They're a third party based on the
 10 client definition?
 11 MS. GODESKY: Yes. And so Mr. Waid's slides
 12 include ten-year periods that the, those international
 13 affiliates, right, were using Blaze in their particular
 14 applications. And so, you know, this isn't just about
 15 hypothetical negotiation in 2016 post-termination.
 16 There's also a huge driver of the numbers here is
 17 hypothetical negotiation sitting there in 2006, also
 18 including these three Chubb affiliates that they say
 19 weren't included in the original license.
 20 THE COURT: Based on the definition of "client."
 21 MS. GODESKY: Correct.
 22 MR. HINDERAKER: I think the plaintiff should
 23 also get a chance to restate the plaintiff's claims.
 24 The definition of client is one element of it,
 25 which depends on whether those foreign insurance companies

1571**1573**

1 phrase "transitional or bridge license" because of the way
 2 that connects to the question of infringement and breach of
 3 contract. That said, it is a fact and you can certainly
 4 discuss the fact that the license is terminated. And the
 5 parties are now -- well, if they were to negotiate a
 6 license for four years.
 7 MR. HINDERAKER: Or whatever the right period is.
 8 THE COURT: Whatever the right period is. I
 9 mean, it's from stem to stern, it's approximately four
 10 years. Different applications are different lengths. So I
 11 think the best approach is four years.
 12 MS. GODESKY: Your Honor, may I just clarify
 13 something on that?
 14 THE COURT: Sure.
 15 MS. GODESKY: So there's different elements to
 16 this claim, and so they have the four-year scenario for,
 17 you know, the enterprise ACE entity.
 18 THE COURT: Right.
 19 MS. GODESKY: But then there's also this question
 20 of -- and I think the question that's presented to the jury
 21 is, what would have been the fair market value of a license
 22 that would have covered use by Chubb Canada, Chubb Europe
 23 and Chubb Australia from 2006 to 2016, under the scenario
 24 where they weren't included in the first place, right, and
 25 so they are seeking ten years there.

1 are subsidiaries or not. Also a different element of it is
 2 paragraph 3.1 of the license agreement says, "Only
 3 employees of Chubb & Son may use Blaze Advisor."
 4 We learned yesterday from Mr. Taylor that no
 5 employees of Chubb & Son are outside of the United States
 6 of America.
 7 So the client, we have -- there's different
 8 routes to the same result. It is part of FICO's claim that
 9 the use for those many years outside of the United States
 10 was a violation of the license agreement.
 11 THE COURT: Okay. Yep.
 12 And so for that then you're going to have to be
 13 clear about negotiating a license for that use for that
 14 period. Okay? Again, we're not going to call it a
 15 hypothetical -- you guys aren't calling it a hypothetical
 16 negotiation.
 17 And it will, of course, be made clear, it needs
 18 to be clear, that the basis for that claim is not a
 19 territorial restriction.
 20 MR. HINDERAKER: Exactly so.
 21 THE COURT: Understood?
 22 MR. HINDERAKER: Can I ask one other question,
 23 Your Honor?
 24 THE COURT: You may.
 25 MR. HINDERAKER: I have used, you know, as you

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1 know from our letters on this issue, I have used the word
2 "transition license," because it was a word that
3 Mr. Schreiber used, kind of an industry term. I'm happy to
4 use -- and in my judgment a transition license is exactly
5 the license that you have described, one license that's
6 come to a conclusion, and it's now necessary to negotiate
7 another license for a period of years.

8 I'm happy to use whatever term the court finds
9 appropriate.

10 THE COURT: There is no way around the notion
11 that the jury is going to understand that that license
12 period occurs after the putative end of the first license.
13 And so that fact just is not capable of being kept from the
14 jury.

15 MR. HINDERAKER: All right.

16 THE COURT: I'm asking you to not use the phrase
17 "transitional" or "bridge," though frankly they may well
18 use that in their own heads.

19 MR. HINDERAKER: Yeah. I'm happy to use any
20 word. Is there just not a shorthand phrase to use,
21 apparently, is what we're saying.

22 THE COURT: Precisely.

23 MR. HINDERAKER: I see. Fine. That's fine too.

24 I don't know if we should -- what I'm thinking
25 about is, I think some of the slides have -- I'd have to

1 because you can't connect the pricing methodology through a
2 witness to the Chubb use. Mr. Waid can testify to that
3 pricing methodology, how it works, how it's supplied, and
4 you can testify to math. Okay? This plus this equals
5 that.

6 You just cannot connect it to Chubb, because then
7 you are, in my judgment, presenting the damages analysis
8 that was excluded that was included in Zoltowski's report.

9 Having said that, so in my judgment slide 27 can
10 come in or can be shown. And you can explain the various
11 components as they -- I'm trying to describe this
12 carefully. So you can say that 15 or 10 of the Chubb
13 applications were large, two of them were very large. You
14 can explain the facts about Chubb's usage. The witness
15 can't connect those two dots.

16 And in final argument, you can only connect those
17 dots by arguing that that is what a willing buyer and
18 seller would have agreed upon. It's argument. The jury is
19 free to disagree with you.

20 So, Ms. Godesky, now what was your point or
21 question?

22 MS. GODESKY: I apologize for interrupting. I
23 okay. Thought you were summoning the jury.

24 THE COURT: No. No.

25 MS. GODESKY: My other issue, Your Honor, was

1575**1577**

1 look at the slides.

2 THE COURT: Yeah, a few of them do, and they will
3 have to take the word "transitional" off.

4 MR. HINDERAKER: Yeah, I'm happy with the --

5 THE COURT: Right.

6 MR. HINDERAKER: I'm just trying to be straight
7 up.

8 THE COURT: Yep. No. I appreciate it.

9 MS. GODESKY: Your Honor, may I?

10 THE COURT: Hang on. No. Let me finish.

11 MS. GODESKY: Oh, sorry.

12 THE COURT: When you're talking about the
13 negotiation or the things that would go into this
14 hypothetical license, the fact witnesses, Mr. Waid, is
15 allowed to discuss the factors that FICO would consider in
16 those negotiations. He may discuss factors that he has
17 observed the other side of the table to consider, but you
18 have to have the foundation to say that.

19 Not what would I consider if I were them, but
20 what have I seen them consider. That can all come in.

21 That said, let me turn to the pricing
22 methodology, and I'm going to jump to sort of the end of
23 it, and then I will hear what you have to say about whether
24 it was disclosed.

25 In my view, slides 28 through 40 cannot be used

1 just with these slides that talk about transition license
2 negotiations, and one of the entries is, "Level of effort
3 to/impact of stopping use." And then there's a sliding
4 scale as to whether the customer can turn Blaze off
5 immediately or if it's going to be time consuming and
6 significant. And that is --

7 THE COURT: Which slide is that?

8 MS. GODESKY: There's an example of it on slide
9 41.

10 THE COURT: I don't have that printed in front of
11 me, but go ahead.

12 MS. GODESKY: My concern is just that that takes
13 us out of willing buyer, willing seller land into world
14 where the buyer is under threat of, if you don't buy this
15 license, you know, we're going to sue you for breach or sue
16 you for copyright infringement. That is how I understand
17 this entry on that slide.

18 THE COURT: I don't necessarily understand it
19 that way.

20 But, Mr. Hinderaker, go ahead.

21 MR. HINDERAKER: Mr. Waid will -- Mr. Waid's
22 understanding of that element is nothing, is 180 degrees
23 from Ms. Godesky's understanding of that element.

24 There are some circumstances and some clients in
25 his experience where he's encountered that it is FICO, more

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1 FICO support to the client. It is useful to the client to
2 make this, to remove Blaze Advisor from, from their systems
3 by the end of the term.

4 And if there is more, if there is some extended
5 support that's required, some level of effort in that, well
6 then that affects the price. If there's not, then it
7 doesn't affect the price. It has nothing to do with any
8 putative or infringing nature of the circumstances.

9 It's just one of the things that he's
10 experienced. In his experience, he has clients that say I
11 want to move off of Blaze Advisor. Let's figure out a term
12 for that and how to do it. And sometimes FICO's services
13 are useful to the client to do that. That's a fact.

14 THE COURT: And I understand it that same way. I
15 would contextualize it by saying, when you are entering
16 into negotiations for a license that has a known fixed
17 term, which is our hypothetical negotiation, one of the
18 factors that the parties might discuss is knowing that the
19 term is four years and what are you going to do to extract
20 the software.

21 Those are factors that I would think they would
22 negotiate over.

23 MR. HINDERAKER: And in fact have.

24 THE COURT: Yeah. The only other issue with
25 respect to this -- well, I think that's sufficient. Okay.

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1 MR. HINDERAKER: Yeah, and then I think there's
2 been -- there was a challenge to 43. This is Mr. Waid's
3 experience that these various factors have different
4 influencing weight, you know, on his negotiations, have had
5 different influencing weight on his negotiations.

6 And so this isn't, this is just testifying to his
7 experience and how those factors have played out.

8 THE COURT: Understood.

9 Ms. Godesky, on those slides.

10 MS. GODESKY: It's because the same language I
11 just pointed Your Honor to was on that slide as well, so --

12 THE COURT: Understood.

13 So take off the phrase "transition license
14 negotiations" and maybe insert "fixed term license
15 negotiations," if you can.

16 MR. HINDERAKER: Well, we're certainly going to
17 do business -- are we on, which slide are you on, Your
18 Honor?

19 THE COURT: Well, I was on 41.

20 MR. HINDERAKER: Yeah, so we --

21 THE COURT: I see.

22 MR. HINDERAKER: Experience with fixed term
23 license negotiations.

24 THE COURT: Yes.

25 MR. HINDERAKER: That's good.

1580

1 THE COURT: Going back to 38, on the top of that,
2 in this context I'm not sure this is appropriate. The
3 slide is labeled "Standard Blaze Advisor Annual ELA Pricing
4 For Post-Termination Global Use."

5 MR. HINDERAKER: The -- we've talked a lot about
6 named application pricing, and many of the slides are doing
7 the standard FICO pricing for the named application. The
8 defendants have made arguments about, well, let's do
9 enterprise pricing. And ELA stands for enterprise license
10 agreement.

11 And so if we were going to follow the basic
12 guidelines, the standard guidelines of FICO for pricing on
13 an enterprise, from an enterprise point of view, then that
14 gets translated into an annual price as well. And that's
15 what slide 38 does. We start not from an application-based
16 construct, but we start from an enterprise-based construct.
17 That then gets translated into the annual fee for the fixed
18 term.

19 THE COURT: And I think the issue, at least for
20 me, with respect to slide 38 is, again, not directly tying
21 it to Chubb. So the language here is clearly tying to
22 Chubb specifically as opposed to the pricing methodology.
23 If you are dealing with an entity, you know, we, our
24 standard pricing methodology is X dollars per billion of
25 revenue or whatever.

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1 So I assume they have some kind of guidelines
2 like that where they're -- in other words, the point is, I
3 don't think we can do a pricing in the evidence tied to
4 Chubb, because that runs afoul of Judge Wright's order that
5 it's not what FICO would charge.

6 And so you could talk about what they normally do
7 or what their standard pricing methodology is for a company
8 of this to that.

9 MR. HINDERAKER: Well, I am confused at this
10 point.

11 THE COURT: Okay.

12 MR. HINDERAKER: Judge Wright clearly said that
13 FICO can introduce its evidence using its standard pricing
14 methodology and the use of Blaze Advisor by defendants.
15 This is a lawsuit against Chubb. And the notion that FICO
16 would be introducing evidence untethered to the defendants
17 or untethered to the facts of the case, I'm just not
18 tracking.

19 THE COURT: And what I'm trying to describe is,
20 you put in the standard pricing methodology. You can put
21 in the facts of the case, okay, through this witness or you
22 can remind the jury through there witness. In final
23 argument, you can connect those two dots in argument and
24 say why that reflects what a willing buyer and a willing
25 seller would agree to.

1610**1612**

1 nets, genetic log rhythms, more decisioning and reference
 2 engine technology, a variety of technologies.
 3 Q. So then you left Stone & Webster, and where did you go
 4 from there?
 5 A. I went to a company called Neuron Data in 1996.
 6 Q. I think Mr. Marce mentioned, identified Neuron Data.
 7 A. Yeah. Jean-Luc was one of a handful of people at
 8 Neuron Data when I joined.
 9 Q. And what was your work at Neuron Data?
 10 A. I was a systems engineer. Essentially my job was to
 11 work with our clients and map the technology to their very
 12 specific problems, get them to -- and buy the software and
 13 then help them figure out how to use it to drive business
 14 value out of the software.
 15 Q. Was there a connection between this work at Neuron Data
 16 and work with the clients that you just described and what
 17 now has become known as Blaze Advisor?
 18 A. Yeah. So one of the challenges with the technology in
 19 my experience at Stone & Webster was that it was very
 20 powerful, but it was very expensive and very difficult to
 21 use.
 22 And at the time, Neuron Data was, had two
 23 products. It had something called Expert, which was an
 24 expert system tool, that older technology I referred to,
 25 and it also had what was known as a cross-platform Gooley

1 your role and, say, Jean-Luc Marce or other people who were
 2 writing code, and I'll call it creating the product.
 3 What was that dynamic?
 4 A. Yeah. We started sort of the pilot work in 1998. And
 5 so I would collect very specific use cases. I would
 6 actually feed back features of the product directly to
 7 Carlos Serranos Morales who was the lead architect and
 8 developer. Jean-Luc worked for Carlos.
 9 And those would then be iterated on and released
 10 as a product, taken back to the client, got additional
 11 feedback on how they used it, what features they thought
 12 they would need going forward, and then that sort of
 13 iterated and cycled.
 14 And you continue to improve the product. It's
 15 what we actually in the software industry call product
 16 management.
 17 Q. Okay. So I think you said the inception was 1996.
 18 A. That's when we started work, yes.
 19 Q. And you said your first launch was 2000.
 20 A. Yeah, we took our beta in '98.
 21 Q. 1998.
 22 A. The first commercial launch to widespread sales was in
 23 2000.
 24 Q. Let's define for us all, what does beta mean in normal
 25 language?

1611**1613**

1 and database tools. Essentially you could build something
 2 in this and deploy it to Unix, a PC, a Mac, any of 28
 3 different environments. This is before Java came in.
 4 Java was coming, so Neuron Data needed to
 5 redefine itself. It needed a new product, or it was going
 6 to go out of business. The proposal was made that we could
 7 actually take the baseline of Neuron Data Expert product
 8 and create a new, more powerful business tool. And this
 9 was the genesis of Blaze Advisor.
 10 Q. And you, and that idea was -- so there's the idea.
 11 What was done with the idea?
 12 A. So we had, we had a starting point and as a system
 13 engineer it was my job to work with clients. So we began
 14 to do what in the software industry we call it sort of beta
 15 testing. We would take early versions of our Blaze Advisor
 16 software to clients. I would work with them, figure out
 17 what their needs were in order to make Blaze more powerful
 18 and more meaningful to them.
 19 And that sort of went through a period up until
 20 2000, and then in 2000, we actually launch the first
 21 official go to market version for Blaze Advisor.
 22 Q. Okay. Let me kind of catch up with you. In your work
 23 with the clients to see what business needs they had that
 24 perhaps could be solved with the technology Blaze Advisor,
 25 I'd like to know what your interaction then was between

1 A. Yeah. It's sort of like, think of it like the Wright
 2 Brothers building an airplane. I don't think anybody
 3 wanted to get on the first airplane they built. Maybe they
 4 did, but it is something like that.
 5 And then when they perfected it, it got strong
 6 enough, stable enough to actually become, you know,
 7 repeatable in-flight airplane.
 8 Q. Okay. And when you get to the, when you get to the
 9 point of being repeatable, that's when you went to market
 10 in 2000.
 11 A. Correct.
 12 Q. How many years -- maybe I'm going to get ahead of you a
 13 little bit here, but for how many years have you been
 14 involved in working with clients to understand how and
 15 direct the enhancements of or the continued improvements of
 16 Blaze Advisor?
 17 A. Since 1998. That really stopped. I have a broader
 18 remit and responsibility, but it is still involved with
 19 Blaze Advisor.
 20 Q. So Neuron Data, what happened to that company?
 21 A. So they rebranded themselves to Blaze Software.
 22 Q. Same company, different name.
 23 A. Just changed the name.
 24 Q. Okay.
 25 A. As I mentioned, their other products became less

1614**1616**

1 useful. And so the focus was entirely on Blaze Advisor,
 2 and they named the company Blaze Software.
 3 Q. Then what happened to the company Blaze Software?
 4 A. Interestingly enough, it was owned by a bunch -- it was
 5 a startup. So it was owned by a bunch of early investors,
 6 and anybody who invests in a company, they want to get
 7 their money out. So these investors have been around for a
 8 long time, and they wanted their money out.
 9 So they did something unusual. The first part is
 10 not unusual. They we want into an initial public offering.
 11 Like they put it on the NASDAQ listing. Raised a bunch of
 12 money. Investors got their investment out. Made a lot of
 13 money off the back of it.
 14 And then a company in Germany called Brokat
 15 actually bought Blaze Software, and another company,
 16 Gemstone, off the market in a reverse, a reverse cash deal.
 17 They basically took it off the market.
 18 Q. Okay. And your personal role in employment, you stayed
 19 with Blaze Advisor through these various companies, did
 20 you?
 21 A. I did. I actually changed roles through a couple of
 22 those transitions, but I stayed.
 23 Q. And then after Brokat, was there another owner after
 24 that?
 25 A. Yeah. So Brokat actually burned through a whole bunch

1 Would you give us -- describe for us the size of
 2 the Blaze Advisor team. I'm not talking about, I guess I'm
 3 not talking about the coders, but the size of the Blaze
 4 Advisor team in the context of bringing Blaze Advisor to
 5 market from, you know, 2002 forward, 2002 on.
 6 A. Yes. HNC had this concept of connecting decisions, and
 7 it was a combination of bringing artificial intelligence,
 8 analytic and predictive modeling and decisioning together
 9 into sort of a unified way of driving business for our
 10 clients. It's essentially what the business FICO and HNC
 11 were in, just at the core, at the core technology level.
 12 So when that came across, FICO wasn't really
 13 interested in that. They were more interested in the
 14 larger revenues from the Falcon product. So I actually had
 15 expected to get laid off in the acquisition and not have a
 16 job, but they decided to keep me, and they asked me to run
 17 a go-to-market function, which is essentially taking those
 18 products into the market.
 19 So in 2002 I had -- it was three people and me.
 20 That was the scope of our go-to-market effort.
 21 Q. And did that go-to-market effort include the product
 22 Blaze Advisor?
 23 A. Yeah, Blaze Advisor was the hallmark product at that
 24 time. There actually wasn't really very many others in the
 25 works in engineering. They were building them, but they

1615**1617**

1 of cash from that acquisition and actually became
 2 insolvent. They pretty much ran out of money in the June
 3 time frame of 2001. And we did find a buyer for the Blaze
 4 Advisor asset in a company called HNC Software, but they
 5 couldn't close before the beginning of August.
 6 So we actually went out to all of our Blaze
 7 clients and said we need you to buy the software that you
 8 were talking about buying so we can stay afloat long enough
 9 to close this deal. And they did. We were very up front
 10 and very clear with them of the situation we were in.
 11 But to keep their investment in Blaze alive, we
 12 needed the money in order to bridge, and they did. So HNC
 13 Software purchased the assets Blaze Advisor.
 14 Q. All right. And then how did Blaze Advisor get to FICO?
 15 A. So a year later, literally one year later in August of
 16 2002, FICO purchased HNC Software. Their primary interest
 17 in, at that time, in HNC Software was a product called
 18 Falcon. Falcon is a fraud prediction tool that uses AI
 19 techniques. It also uses Blaze Advisor.
 20 And it essentially predicts potential fraud or on
 21 credit cards or debit cards. So every time you swipe your
 22 card, it's back there checking to make sure it was you who
 23 actually charged the card.
 24 Q. Okay. So we've come forward to Blaze Advisor and
 25 yourself at FICO in 2002.

1 weren't ready for go-to-market.
 2 Q. In these early years were additional -- in addition to
 3 the in-house, I'll call it in-house enhancements and
 4 capabilities and improvements, feeding back from the client
 5 feedback, in these early FICO years, were other investments
 6 made into the capabilities of Blaze Advisor?
 7 A. Yeah, a tremendous amount of them, actually.
 8 Q. Can you tell us what they were?
 9 A. It's a long list.
 10 So we introduced what we call RMA, our rule
 11 maintenance application. We've actually purchased another
 12 company called Rules Power. That was a company by
 13 Dr. Charles Forgy, who was the inventor of RETE, and he had
 14 a patent for something called RETE 3. He owned that. It
 15 was faster than RETE 2 and RETE 1, but it also included
 16 conflict detection. Checked for things like circular
 17 logic, rules never reached, nested rules that actually
 18 conflict with one another.
 19 It was a way to sort of check the validity of the
 20 rules. And our business is entirely focussed on enabling
 21 businesses to make better decisions, and business users
 22 today, they're all business users of the product. So we
 23 needed these capabilities to make sure that when
 24 businesses -- business people are authoring rules that
 25 they're not doing something they shouldn't be doing and

1626**1628**

1 directly in the same unit.

2 And when you when you talked about any kind of

3 coding or programming, it's all in line, unless you're

4 architecture is designed to separate that.

5 Q. Okay. Does the concept of latency have anything to do

6 with the use of Blaze Advisor?

7 A. It has more to do with the architecture. Your

8 architecture of your design is a bigger issue here. In

9 today's modern compute world, though, we have a ton of

10 customers processing huge volumes on the Cloud, and we

11 don't have latency problems.

12 If you are in your own data center, you shouldn't

13 have latency problems. Performance does play into that,

14 though.

15 Q. Meaning?

16 A. Well, the time to communicate is also the time to

17 process. So if you have performance problems with your

18 software and it takes a long time for it to execute, you

19 will have the appearance of a latency. Where that actual

20 delay is coming from, dependent on your architecture,

21 depends on your coding practices. In the business world

22 space, business rules space, it gets a little confusing

23 because there's two forms of performance.

24 There's the performance of the rules. Did I have

25 good business outcome? And then there's the performance of

1 listing of the officers of Federal Insurance Company.

2 A. Yes.

3 Q. Thank you.

4 Let me change topics again. I'd like to

5 understand -- I'd like to understand the business model in

6 the software industry. I'd like to -- in a way I'm going

7 back to 1996, 2002, but I'd like to understand the model,

8 the business model in the software industry. But let's,

9 let's make it specific to Blaze Advisor and the lawsuit.

10 So when Blaze Advisor was first introduced into

11 the market and sold to the early customers, was there any

12 profit made?

13 A. No profit.

14 Q. All right. Is that a common element, common aspect of

15 the software business model?

16 A. It is very common.

17 Q. Can you explain that for us, please?

18 A. Yeah, and you will see this in start-up companies.

19 They're looking for investment money. It's capital.

20 There's a number of reasons for it.

21 First of all, it takes time for you to build the

22 core software and get it to a state where it begins to

23 bring business value.

24 Once you get to that state, then you actually

25 have to take it to market and sell it, and you have to

1627**1629**

1 executing them.

2 Q. Understood. I'm changing topics again.

3 I'd like you to find in your book the

4 Exhibit 956.

5 A. I have that.

6 Q. Okay. And you see that -- if we could publish the

7 first page. I think there's no objection to it.

8 956 is the 2014 Chubb Corporation annual report.

9 Great.

10 You may recall Mr. Pandey saying that he had

11 never heard of Chubb & Son, a division of Federal, before

12 this lawsuit?

13 A. I do.

14 Q. Would you turn to page 12 of this annual report,

15 please.

16 A. I am there.

17 Q. Okay. And you see that begins a listing of the

18 officers of Chubb & Son, a division of Federal?

19 A. I do.

20 Q. Okay. And would you turn to page 13?

21 A. I am there.

22 Q. All right. And under "officers," what's the first name

23 of officer of Chubb & Son?

24 A. Ramesh Pandey.

25 Q. And then if we go down that page a bit, we see a

1 establish customers with some kind of reoccurring or

2 regular revenue stream so that you can offset those

3 expenses. And the period of time that it takes, that

4 depends on the software.

5 But it's not uncommon for it to take many years

6 before a software product actually begins to make money.

7 The good part about it is once it does, it starts making

8 lots of money.

9 Q. In the early years of Blaze Advisor -- well let me ask

10 you this: How many years did Blaze Advisor lose money

11 before it turned?

12 A. Well, we, if you count when we actually went to market

13 full, it's around nine years.

14 Q. Before it turned?

15 A. Before it turned a profit, yeah.

16 Q. So 2000 launch. Nine years brings us to 2009.

17 A. Yeah, around there. Maybe the end of 2008.

18 Q. Okay. Changing topics again.

19 We've heard a lot of language, use of words in

20 the trial. We've heard the words "rules." We've heard the

21 words "business rules." Is there a distinction between

22 those?

23 A. There is. The concept of a rule is actually a

24 programming construct. It's where it came out of. Most

25 people think of it as an if then else rule. A business

<p style="text-align: right;">1630</p> <p>1 rule by its very nature and by its label refers to rules</p> <p>2 that the business actually control or own.</p> <p>3 So they're the ones that come up with it.</p> <p>4 They're the ones that have to actually get it into some</p> <p>5 kind of operating function. They're the ones that have to</p> <p>6 ensure that it's separating the way they intend it to be.</p> <p>7 They're the ones who have to make sure it's a compliant</p> <p>8 rule.</p> <p>9 And so there's this connectivity between the</p> <p>10 business having a care and ownership of that versus not.</p> <p>11 I'll give you an example.</p> <p>12 You actually want to convert a date of birth to</p> <p>13 an age. That actually constitutes a rule, not something a</p> <p>14 business person is generally interested in.</p> <p>15 Q. Then now let's talk about what a business rule is in</p> <p>16 contrast to that.</p> <p>17 A. They can be quite varied. But by their pure</p> <p>18 definition, they are rules that the business actually cares</p> <p>19 to use to operate their business. Very frequently those</p> <p>20 rules change. They change from pressures from a variety of</p> <p>21 reasons.</p> <p>22 One is compliance. Another one would be new</p> <p>23 product introduction. Some of it might be competitive</p> <p>24 pressure that they have to adjust against. There's a lot</p> <p>25 of reasons why, but in the core systems of banks and</p>	<p style="text-align: right;">1632</p> <p>1 Q. And in fact were you the person who gave final approval</p> <p>2 for the pricing of this license agreement?</p> <p>3 A. I don't recall that, but it would have been me, yes.</p> <p>4 Q. Okay. And would it have been you that approved the</p> <p>5 pricing for each of the amendments, Amendment one and</p> <p>6 Amendment two?</p> <p>7 A. It would have required my approval, yes.</p> <p>8 Q. In 2006, and going back to the discussion we just had</p> <p>9 about the -- we can take this down now for a little bit.</p> <p>10 Going back to the discussion that we had about</p> <p>11 the business model and the software industry and the</p> <p>12 investment before turning profit, in 2006, that time frame,</p> <p>13 what were FICO's discounting practices regarding Blaze</p> <p>14 Advisor?</p> <p>15 A. I would use the word "aggressive."</p> <p>16 Q. Okay. Can you build on that for us?</p> <p>17 A. Look. 2002 we just get this thing off the ground.</p> <p>18 2003, there's three of us kicking around into 2004. We're</p> <p>19 look to go secure enough business to get references in the</p> <p>20 industry.</p> <p>21 Once you get those references and clients see</p> <p>22 what you are able to accomplish with other clients, that</p> <p>23 builds on itself, and you start to build a base of more</p> <p>24 sales, both with the same clients or with new clients.</p> <p>25 So it's not uncommon early in software to be</p>
<p style="text-align: right;">1631</p> <p>1 insurance, those core rules actually become the</p> <p>2 representation of how they do business.</p> <p>3 Q. So if we were going to try to understand the</p> <p>4 significance within a company, I take it that we should be</p> <p>5 asking about the business rules as opposed to their rules.</p> <p>6 A. Yes.</p> <p>7 Q. Let me change topics again. Well, let me -- yeah, let</p> <p>8 me do this first.</p> <p>9 If we could get J1, please, the license</p> <p>10 agreement. There we go. Thank you.</p> <p>11 So we have on the screen, and you have the book</p> <p>12 there, Mr. Waid, J1, the software license and maintenance</p> <p>13 agreement between Chubb & Son, a division, and FICO, right?</p> <p>14 I'd like to know, at this stage what was your</p> <p>15 personal role with respect to, with respect to this license</p> <p>16 agreement?</p> <p>17 A. So 2006, this would have been when the team was growing</p> <p>18 to become international. So I had international remit for</p> <p>19 Blaze and other related tools products.</p> <p>20 So I would have actually been involved in any</p> <p>21 sort of core decisions made around pricing or material</p> <p>22 changes in our contract terms or things of that nature.</p> <p>23 They would have had to come to me for approval.</p> <p>24 Q. So your involvement at the management level?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">1633</p> <p>1 quite aggressive by discounting very low sometimes in order</p> <p>2 to secure those reference accounts and secure that initial</p> <p>3 business.</p> <p>4 Q. For the prospect of future business?</p> <p>5 A. Always for the prospect of future business, yes.</p> <p>6 Q. And when we look at the license agreement, we see that</p> <p>7 Amendment Two was signed at the end of December of 2006.</p> <p>8 A. Yes.</p> <p>9 Q. Did that, does that timing bear on FICO motivations</p> <p>10 with this product for discounting?</p> <p>11 A. At this time it did.</p> <p>12 Q. Why?</p> <p>13 A. It was -- it was our general practice to incent</p> <p>14 customers to move to larger deals as quickly as possible.</p> <p>15 It was our common practice at the time, if they bought an</p> <p>16 initial license, to communicate to them in some form,</p> <p>17 either written or go back and try to convince them, hey, if</p> <p>18 you upgrade your license or if you buy more, I will credit</p> <p>19 back what you've already bought 100 percent, just so you</p> <p>20 buy more.</p> <p>21 Those practices were quite common at that time</p> <p>22 frame, yes.</p> <p>23 Q. Okay. Can you contrast that to 2016?</p> <p>24 A. Very different.</p> <p>25 Q. And how and why?</p>

1634**1636**

1 A. Our pricing model -- well, pricing model always been
 2 our pricing model, but our pricing practices around
 3 discount around the 2010-11, time frame, we started
 4 becoming more stringent in how and where we actually
 5 offered discounts. That's reflected in the business.
 6 We also changed other practices too. Like we
 7 began moving away from perpetual licenses. The market was
 8 moving away. We were moving away. We were moving towards
 9 term licenses, which establish a reoccurring revenue base
 10 for the product.
 11 Q. You mentioned standard pricing guidelines did not
 12 change from that time frame.
 13 A. The pricing and how we priced did not change, no. It's
 14 the same pricing model that we had all the way back in
 15 2003.
 16 Q. But discounting has changed?
 17 A. Yes.
 18 Q. And in terms of market acceptance to FICO's pricing
 19 without the aggressive discounting, can you describe that?
 20 A. Yeah. We began in the 2000 -- I said 2010, 2011 time
 21 frame of sort of pulling back on the level of discounts and
 22 by 2015 into '16, you know, relatively strong flat sales.
 23 Going into '17 we had even more sales, 20 percent by my
 24 last look of that.
 25 So it was, it was a strong business at that point

1 A. Yes, the client is bound to all of the terms of the
 2 agreement.
 3 Q. And the -- we've seen already that in the definition
 4 of -- in Amendment One and Amendment Two, the definition of
 5 "client" did not change.
 6 Were you part of any discussions during that time
 7 frame of Chubb & Son wanting to sign -- of any discussion
 8 about the client being anybody else but Chubb & Son?
 9 A. No.
 10 Q. Going back to the basic, to the base agreement, we look
 11 at the license grant in paragraph 2.1. And there we see,
 12 just as you said, the licenses is a, "hereby grants to
 13 client."
 14 But I'm also interested in asking your, the
 15 business reasons for the fact that the license agreement
 16 says it's non-transferrable, nonexclusive and a limited
 17 license.
 18 A. Yeah, so first of all, software licenses are a
 19 construct whereby ownership stays with FICO. It's our IPR
 20 software. The license just gives them a right to use, and
 21 there's specific conditions under that right to use.
 22 This begins to outline the fact that this
 23 agreement is with the client, and they cannot transfer this
 24 agreement to anybody else, and it is nonexclusive, meaning
 25 it is not just for them, and that there are limits framed

1635**1637**

1 in time.
 2 Q. Without aggressive discount?
 3 A. Without aggressive discounting, yes.
 4 Q. If we could go back to the license agreement, please.
 5 You see at the top of the, at the top of the
 6 license agreement in the first paragraph, if we could open
 7 that up.
 8 A. Yes.
 9 Q. The software license and maintenance agreement is
 10 entered into as of June 30, 2006, between Fair Isaac
 11 Corporation and Chubb & Son, a division of Federal, client.
 12 From your role on the business of FICO, but
 13 specifically in the licensing of Blaze Advisor, what's the
 14 significance, what's the business significance of defining
 15 who the client is?
 16 A. It defines who you are doing business with. It defines
 17 who you are licensing the software to.
 18 Q. Okay. And does it also -- well, a license agreement
 19 is, of course, a two-way agreement, licensor/licensee.
 20 A. Yes.
 21 Q. And FICO as the licensor is bound by the terms of the
 22 agreement.
 23 A. Yes.
 24 Q. And then on the licensee side, it's the client that's
 25 bound by the terms of the agreement.

1 within this agreement that they must adhere to.
 2 Q. And what's the business thinking behind the phrase "for
 3 internal business purposes only"?
 4 A. Yeah. So this is an additional protection that we want
 5 to make sure that the use of the license, the right to use
 6 the license, is for the individual that we're licensing to,
 7 in this case the client, and that it is for their internal
 8 business purposes, and they can't extend or reach that use
 9 of the license outside of the use just for that client.
 10 Q. Let's turn to 3.1. This is called License
 11 Restrictions. There's a number of them, but overall,
 12 what's the commercial business reason for FICO to put
 13 restrictions into the license?
 14 A. They're all there to make sure that the software is
 15 used in accordance with very specific constraints or
 16 limitations that we place on that license grant. There's
 17 various reasons for them from a business perspective, but
 18 all of it is to protect a very valuable piece of IP.
 19 Q. Being Blaze Advisor?
 20 A. In this case Blaze Advisor.
 21 Q. If we go into 3.1, we see the small Roman iv. So it.
 22 Begins, "Client represents and warrants that it and its
 23 employees shall not," and then Roman, small Roman iv,
 24 "disclose the Fair Isaac products to or permit use or
 25 access of the Fair Isaac products by any third party or any

1650**1652**

1 against the value that it offers. There are several
 2 metrics that we use for doing that. When we get to the
 3 scenario here, which is an enterprise-wide, there's other
 4 factors that come into play, but the primary metric we use
 5 is revenues.
 6 Q. Revenues of -- what's your first data point for
 7 revenues then?
 8 A. It's the revenues of the entire entity that we're
 9 actually contracting with.
 10 Q. Of which the client is a part?
 11 A. Of which the client is a part, yes.
 12 Q. Okay. Because we've heard testimony of the revenue,
 13 and Mr. Wachs testified in his video of the Chubb
 14 Corporation having \$12.3 billion in annual revenue.
 15 So if you would describe for us how that data
 16 point of the whole organization then factors into the
 17 pricing analysis that you apply, like in the first
 18 instance, to a named application license, then to a
 19 divisional and then to the enterprise of Chubb & Son.
 20 A. Well, the application license is actually based on a
 21 variety of factors. There's nine of them. When we get to
 22 the divisional license here at the 350, the way that it
 23 would have been priced was to take the entire entity, all
 24 12.3 billion of it.
 25 And if my memory is correct, I think in the RFI

1 less or more?
 2 A. It will be less.
 3 Q. Because of value?
 4 A. Yes.
 5 Q. Once the license agreement is signed, does -- does FICO
 6 ever revisit the original, you know, ever go to the client
 7 and revisit that price?
 8 A. That depends on the circumstances.
 9 Q. Okay. All right. Let's just say, let's just say the
 10 client is wildly successful, the client is growing
 11 organically, the client makes, over time is just a much
 12 bigger client, but it's all organic.
 13 Does FICO try to revisit that pricing?
 14 A. We do not.
 15 Q. Well, then let's turn to paragraph 10.8.
 16 Of the license agreement with Chubb & Son, as we
 17 see, it's entitled No Assignment. From your decades of
 18 experience, do all of the Blaze Advisor license agreements
 19 have some form of a no assignment clause?
 20 A. Yes, they all have some form of it.
 21 Q. And what is the, why in some cases is it different from
 22 others?
 23 A. It can be negotiated. At times with clients, they
 24 would come back and want to change the language. If we in
 25 the odd case actually used client's paper. We sometimes

1651**1653**

1 they said that their revenues was 3.5 billion for
 2 specialty.
 3 Q. Specialty lines.
 4 A. Specialty lines. So essentially you don't take a
 5 proportion of that and say, let's say the pricing for the
 6 \$12.3 billion organization came out to X, and the specialty
 7 lines is 30 percent of X. We don't charge 30 percent of
 8 the X. What we do is, we try to incent the client to move
 9 to a larger purchase, just like we do with the credits. So
 10 we'll take the difference between that, which in this case
 11 is the three and a half billion to the 12.3.
 12 And it's more of an art than it is a science. We
 13 pick anywhere between a third and two-thirds of the way
 14 between, and we say that's the right price point for this
 15 division.
 16 Q. And, of course, it's a matter of then negotiation
 17 because the licensee as to decide as well.
 18 A. Of course it is, yes.
 19 Q. And let's say it is a different client that's much
 20 smaller. Let's say it's a client with 5 million in
 21 revenue, and that license licenses Blaze Advisor. Is it
 22 the same software that goes to the \$5 million client as
 23 goes to a huge client?
 24 A. We have one software.
 25 Q. And the fee for the \$5 million client will be same or

1 negotiate it in. So it is a negotiable term, but it is
 2 still there.
 3 Q. Is it fair to say that every negotiation with every
 4 client is unique to that client?
 5 A. Yeah, they are all unique. Sometimes it gets
 6 interesting.
 7 Q. What in overview, can you give us -- well, let's take
 8 it in pieces.
 9 The first sentence, "Neither party shall without
 10 the prior written consent of the other party assign or
 11 transfer this agreement or any part thereof." So that's of
 12 course it's mutual, "neither party."
 13 What's the business purpose of that first
 14 sentence?
 15 A. It's very simple as that bidirectionally, either party
 16 has the opportunity to consent to the assignment.
 17 Q. If the licensor/licensee relationship was going to
 18 change by assignment, either party gets to consent? Is
 19 that what you said?
 20 A. Yes. That's correct.
 21 Q. Now let's -- and now let's go to the second sentence.
 22 What's the reason that that's in FICO license
 23 agreements?
 24 A. These contracts are all negotiated, in particular for
 25 enterprise agreements, in a unique set of circumstances.

1654**1656**

1 There are events, such as mergers and acquisitions or
 2 reorganizations or the bringing on of portfolios, that have
 3 an impact to the circumstances under which it was
 4 originally conceived.
 5 So this section is basically saying that these
 6 events are considered an assignment and it requires
 7 consent.
 8 Q. Okay. And why does FICO preserve that right to itself
 9 to consent when one of those events happens?
 10 A. Well, these particular type of events in specific
 11 actually materially change the basis, could materially
 12 change the basis on which the license was granted and the
 13 price that was set for that license.
 14 Q. And you use the word "could." So depending on the
 15 case?
 16 A. Yeah. I mean, it could be a very small acquisition and
 17 it's not material or impacting.
 18 Q. In your view, regardless of size, if there is one of
 19 these events, FICO's consent is required?
 20 A. Absolutely. We want to know about it. We need to
 21 assess that, the opportunity to assess that, and we need to
 22 consent to it. That's what this is saying.
 23 Q. So now let's be clear. Consent to what?
 24 A. Well, these events are deemed an assignment. That
 25 means that if any one of these things happens, it is an

1 software, lock it down.
 2 Q. And what's, you know, so trying to understand now the
 3 time period in which, assuming the event triggering the
 4 second sentence, as you understand it from the business
 5 point of view, what's the time period in which this
 6 lockdown of the use would be in effect?
 7 A. Well, the time period -- well, first of all, should
 8 have been notified before the event occurred.
 9 Q. Yeah.
 10 A. But the time period is actually probably specified in
 11 the contract relative to the cure period.
 12 Q. Okay.
 13 A. Typically it's 30 days.
 14 Q. Let's assume that's true. So is that saying, within
 15 30 days under the license agreement, there will be consent
 16 given and going forward maybe with amended terms or consent
 17 not given and the license terminated?
 18 A. Yeah. Consent could be given, and there's some
 19 paperwork to follow up on what that actually means.
 20 Consent could be not given, in which case, you know, we
 21 need to talk about the termination of the agreement. New
 22 sets of terms and a new agreement could actually be
 23 negotiated.
 24 There's a whole series of things that could
 25 happen. The point of the, the language is to make sure

1655**1657**

1 assignment, and therefore we need to consent to it.
 2 Q. And what's the outcome -- let's say you do consent,
 3 what's the outcome of that?
 4 A. If we do consent, typically there's a modification to
 5 the agreement so that we know who the parties are.
 6 Q. Or what the use is?
 7 A. And we memorialize that, yes.
 8 Q. Now, in this second sentence, "In the event of a change
 9 of control of client or if client is merged with, acquired
 10 by or acquires another entity or undergoes a reorganization
 11 or otherwise acquires the right to process the business of
 12 another, each such event shall be deemed to be an
 13 assignment subject to this section, and the client shall
 14 make no expanded use as a result of any such event."
 15 So is there any -- in your understanding, the
 16 license agreement is still with the client?
 17 A. Yes.
 18 Q. Now, it goes on to say, "And client shall make no
 19 expanded use of the Fair Isaac product as a result of any
 20 such event unless and until Fair Isaac provides such
 21 written consent."
 22 What's the commercial reason for that element of
 23 the second sentence?
 24 A. It's an additional constraint that until consent is
 25 actually made, lock it down, don't do anything with that

1 that, you know, in mergers and acquisition there's an
 2 opportunity for synergies. This is referring to the fact
 3 that you have an opportunity to grow the business just by
 4 your nature of that merger and acquisition.
 5 That's why you merged or acquired in the first
 6 place, to grow the business.
 7 Q. So being bigger gives you opportunities to grow
 8 business?
 9 A. It does. And the point here is, you shouldn't be
 10 processing any incremental business as a result of that.
 11 It's lockdown until the consent is actually given and the
 12 terms under which that is given.
 13 Q. And that, of course, and I guess we just said, and if
 14 consent is not given, well then the license terminates.
 15 A. Yes, which is an option.
 16 Q. Is it the preferred option to FICO?
 17 A. It is not, no. Our intention is to have long-term
 18 relationships with our clients. There is a, an incremental
 19 value we get from our clients and having them happy with
 20 our products. That is actually feeding into the, strongly
 21 feeding into our business strategy.
 22 So, no, we seek to actually find amenable
 23 outcomes in these situations.
 24 Q. Okay. Let me just see where I'm at. Would you go
 25 to -- I think it's Exhibit 125.

1682**1684**

1 A. No.
 2 Q. From your point of view, was the commercial purpose of
 3 the license agreement as signed, with the license agreement
 4 as signed, if there is, if there are no affiliates of the
 5 client, does that change anything in your view regarding
 6 the license agreement?
 7 A. No.
 8 Q. Why not?
 9 A. Still with the client.
 10 Q. Now, we saw in Mr. Carretta's notice of termination
 11 letter that it was effective, excuse me, effective the next
 12 day. And he referenced in that letter paragraph 9.3 of the
 13 license agreement. So let's just go to that for a moment.
 14 Effective termination. We all can read it.
 15 Client shall immediately cease using all Fair Isaac's
 16 products and so forth.
 17 A. Yeah.
 18 Q. Okay. And we saw from Mr. Carretta's letter that he
 19 specifically pointed out that provision and the
 20 consequences of not stopping use.
 21 Today, as of today -- well, at any time, did you
 22 receive a communication from Chubb & Son that they had
 23 stopped using Blaze Advisor?
 24 A. I have not.
 25 Q. Did you ever receive a return of the documentation or a

1 your personal experience in the negotiation of license
 2 agreements.
 3 A. Okay.
 4 Q. And I guess let's begin with personally, speaking of
 5 you personally, not me. Speaking of you personally.
 6 How many negotiations of -- for Blaze Advisor
 7 license fees have you been a part of?
 8 A. That would be really hard to say, but it's definitely
 9 hundreds and hundreds of them.
 10 Q. And is it fair to say that you've been negotiating
 11 Blaze Advisor license agreements in one form or another
 12 since maybe 2002 or 2000?
 13 A. Even before that.
 14 Q. And as we noted in 2006 time frame, then you were the
 15 person with final authority on pricing. Is that still, was
 16 that true still in 2016?
 17 A. Yes. In 2016, absolutely.
 18 Q. Have you experience in negotiating agreements with
 19 clients where, where the license agreement that they have
 20 has come to an end, and you're negotiating with them for a
 21 new license agreement?
 22 A. Yes.
 23 Q. And you've had experience where you're negotiating a
 24 license agreement with someone who has never been a client
 25 as well?

1683**1685**

1 certification that the documentation had been destroyed?
 2 A. I have not.
 3 Q. Let's turn to the subject matter of ACE American. We
 4 saw in earlier testimony that there's a small license
 5 agreement between FICO and ACE American. Are you generally
 6 familiar with that?
 7 A. I am.
 8 Q. Does that license agreement have any, any applicability
 9 to the use of Blaze Advisor by Chubb & Son, the client in
 10 this agreement?
 11 A. It does not.
 12 Q. When did you first learn that ACE American Insurance
 13 was using Blaze Advisor in connection with selling
 14 insurance, using Blaze Advisor in the applications that
 15 previously had been the ones run by Chubb & Son?
 16 A. In this lawsuit.
 17 Q. Never before?
 18 A. No.
 19 Q. So then it's obvious to say that no one from ACE
 20 American ever reached out to FICO to your knowledge to try
 21 to license Blaze Advisor to use in connection with selling
 22 insurance?
 23 A. No.
 24 Q. I want to now turn to, I want to now turn to
 25 standard -- well, I want to now turn to the experience,

1 A. Yes.
 2 Q. And you mentioned before that, well, discounting
 3 practices have changed. The guidelines for pricing really
 4 have not, since 2003?
 5 A. Yeah. The core -- the core pricing model has not
 6 changed, no.
 7 Q. So I would ask you to go to Exhibit 421, please.
 8 A. I'm sorry. You said 421?
 9 Q. 421. 418. It used to be called 421. Now it's called
 10 418. Let's go to 418.
 11 This is, as you see, Business Science Enterprise
 12 Decision Management Design and Deployment, Tools and
 13 Infrastructure Software Global Price List, 10/10/03.
 14 I would like to first start by just understanding
 15 the pricing methodology that FICO applies for the Blaze
 16 Advisor licenses.
 17 A. Okay.
 18 Q. And let's begin with, with this document, and if you
 19 could educate us about how to read it and how to use it.
 20 A. Okay.
 21 Q. All right? And by the by, it's been in place since
 22 2003. Over the decades, what's the reaction, what's the
 23 reaction from the marketplace to this methodology that FICO
 24 applies in pricing?
 25 A. Yeah. Ultimately the named application licensing that

1686**1688**

1 we do in this guide became the most popular form of it.
 2 Enterprise license agreements were very popular up front.
 3 Today we don't sell enterprise license agreements anymore.
 4 Most clients aren't interested in it.
 5 But those two initially out of the gate were the
 6 most popular.
 7 Q. Okay. And as we go through this then, we will try to
 8 keep that in mind that there are two flavors, the named
 9 application and the enterprise, and we'll treat them,
 10 excuse me, as best we can as separate things so we're not
 11 getting ourselves confused, or me confused.
 12 So let's go, if you would walk us through -- so
 13 at the time of the notice of breach letter in 2016, these
 14 are in place. Would you walk us through how these
 15 guidelines work? Maybe we start at 2.1.1 or 2.1.2.
 16 A. Yeah, they're both related.
 17 Q. Okay.
 18 A. So in software industry there's two types of license
 19 grants, generally speaking, annual or subscription and
 20 perpetual.
 21 Back in this time frame and for a number of years
 22 following, most software, or most clients actually
 23 preferred to buy perpetual licenses. The primary
 24 distinction between the two of them is, perpetual means
 25 that the license continues to go on as long as the license

1 categories of things.
 2 One, the product continues to evolve. We invest
 3 it in. We add new features to it. Hopefully we don't get
 4 defects, but if there are, we fix them.
 5 And then we also offer support lines you heard
 6 Chris Ivey talk about. That's what he does, so you can
 7 call him and ask for help, ask questions, troubleshoot
 8 problems.
 9 So the maintenance and support is a service. You
 10 pay for that every year. And what this section is
 11 referring to is how that maintenance is calculated.
 12 In perpetual it's [REDACTED] is what is listed
 13 here. You will see later in the section, you can't go
 14 below [REDACTED]. It's a negotiated term.
 15 And on the annual maintenance, you will see here
 16 that at this time it was included in the fee. Later on we
 17 had to separate them out because of our revenue accounting
 18 and the way our accounting systems -- our accounting for
 19 revenue actually occurs.
 20 Q. Okay. If we move forward to 2016, was there a standard
 21 maintenance percentage at that point?
 22 A. Yeah, things changed throughout the years, but in
 23 February of 2015, all maintenance was standardized across
 24 all products at [REDACTED], and it was required. You
 25 couldn't get out of it. You had to buy maintenance.

1687**1689**

1 agreement terms are being upheld.
 2 In the annual licensing, it's for a period of
 3 time called a term. So clients can pick that, anywhere
 4 between, you know, one-year and five-year. We don't sell
 5 longer than five-year terms at this point in time.
 6 And essentially the client is signing up and
 7 saying, for a period of time I'm going to license the
 8 software. And that's what this is speaking to here, is
 9 those two types of licenses, perpetual and annual.
 10 Sometimes we use the term and annual interchangeably. So
 11 forgive me if I do that.
 12 Q. These, of course, are licenses, not purchases.
 13 A. They are licenses. Absolutely.
 14 Q. Permissions to use.
 15 A. Permissions to use under the contract.
 16 Q. Okay. This -- is there anything more, I mean, there's
 17 other things said here. Is there anything more of interest
 18 from your point of view in describing the FICO pricing
 19 methodology that comes out of 2.1.2 or 2.1.2?
 20 A. It does speak to this concept of annual maintenance and
 21 support. So I'm sure this is going to come up, so you
 22 might as well cover it.
 23 So there's a license to use the software, and
 24 then there's a service that FICO offers called maintenance
 25 and support. And it covers two categories, general

1 Q. And by -- so we've seen testimony of Blaze Advisor
 2 having different versions. We have the copyright
 3 registrations, you know, that started, 3.0 I think, and go
 4 forward by many, many verges.
 5 If a client wants to be updated or upgraded to
 6 the next version of Blaze Advisor, is that a right the
 7 client has because it pays for maintenance?
 8 A. If they are paying for maintenance and support and they
 9 are current on their payments then, yes, they get access to
 10 the new software.
 11 Q. Let's go to then, if it's helpful, but you're the one.
 12 I'm looking at 2.2.2, Standard Order Volume Discount
 13 Schedules. Do I have that right?
 14 A. Yeah. We don't use that. We -- it was put into this
 15 price guide as sort of a way to get clients to buy over
 16 time. Essentially, it's you buy a little bit more now, and
 17 little bit later, you buy some more and buy some more. And
 18 over time, we will give you bigger discounts because you
 19 buy a lot from us.
 20 Q. Excuse me for a moment. I think I misspoke to 2.2.2,
 21 but it's really 2.2.1?
 22 A. Yeah, 2.2.1. This is our standard discount schedule
 23 for a particular transaction. So if a client is going to
 24 buy software from us, depending on the amount that they're
 25 going to spend, there's an allowable discount.

1690**1692**

1 There's no requirement to discount, but there is
 2 an allowable discount. This gives our salespeople the
 3 latitude to request and think in the scope of how much can
 4 they actually discount the software.
 5 There is authority levels on these different
 6 tiers. So individual salespeople can discount [REDACTED]
 7 [REDACTED] without asking. They have to ask their manager to
 8 go to [REDACTED], and so on up the line. You can see here
 9 that it's capped at [REDACTED].
 10 That doesn't mean we didn't discount more than
 11 [REDACTED]. It was just not publicized, and those deals
 12 that were above that have to have senior executive
 13 management approval.
 14 Q. And is that discounting, what's the practices today
 15 with respect to 2.2.1 or in 2016?
 16 A. Yeah. We don't use this discount schedule anymore. We
 17 haven't use it in a long period of time. As I mentioned
 18 earlier, our discounting practices have changed
 19 dramatically over the years.
 20 Q. Is there any use -- I jumped us ahead to 2.2.2. Is
 21 there useful information there in terms of understanding
 22 standard pricing methodology?
 23 A. Not really. As I was saying, this is a, this is an
 24 option for discounts over time, and they are lower amounts.
 25 Clients didn't really prefer this. They actually preferred

1 Blaze Decision Management.
 2 So tell us what we need to know from 7.1, the
 3 introduction.
 4 A. So at this time there was two separate products, the
 5 Blaze Advisor and the Blaze Decision System. This is a
 6 holdout because FICO when they bought HNC had their own
 7 sort of rules engine capability called Decision System.
 8 So we had clients who were using this, and we
 9 cobranded them Blaze, but they were two separate products.
 10 Shortly after this, we merged those products, and anybody
 11 who was a Decision System customer became a Blaze customer,
 12 and all that functionality that was in Decision System
 13 became available in Blaze.
 14 And what you see underneath that, though is a
 15 listing of options. You have seen some of these already.
 16 Q. Mr. Waid, before we go there, let's -- no. Stay in
 17 this section, but I just want to point out at the first
 18 bullet point, Blaze Advisor, which has two components that
 19 are sold separately. And here we have the guidelines
 20 talking about Blaze Advisor development, and then Blaze
 21 Advisor deployment.
 22 A. That's correct.
 23 Q. Okay. I just want to tie that back to the license
 24 agreement. All right.
 25 So I interrupted you. You were going to say?

1691**1693**

1 negotiating each deal. So very infrequently did we use
 2 this and only early on.
 3 Q. Okay. Well then let's go to 2.2.3, Marketing Reference
 4 Client Discount.
 5 A. Yeah. We, particularly early on as we're trying to get
 6 this business off the ground, we are interested in
 7 marketing attribution. We need clients to stand up and
 8 say, hey, yeah, we like this software. It works well.
 9 Create case studies and tell us about what benefits they
 10 got from it, press releases, speaking engagements, anything
 11 that's marketing related to sort of drum up new business.
 12 The easiest way and the best way for us to get
 13 business is for our clients to talk to other clients or
 14 prospects about how great the software was. So we would
 15 incent clients to say, hey, look, we'll give you [REDACTED]
 16 [REDACTED] additional discount if you actually become a
 17 marketing reference.
 18 Q. Is that influence in pricing true as of 2016 to the
 19 same extent?
 20 A. We don't really give marketing discounts anymore.
 21 That's kind of frowned upon in the industry. It's sort of
 22 like a sort of bribery thing, so we've taken that off. We
 23 still ask for marketing attribution, but we don't give
 24 discounts for it, no.
 25 Q. Okay. Well, should we move to, move to Section 7,

1 A. Yeah. I was just going to say that you will see these
 2 listing of add-on options.
 3 The Java code generation high speed processing,
 4 you will see it referenced in here as high performance
 5 option, today it's called the compile sequential option.
 6 It's the same thing, but we support COBOL, Java and C
 7 languages. These are all languages that our clients might
 8 want to work with in this sort of compile mode, very
 9 separate from the RETE engine that I talked about. Those
 10 are two totally separate things, somewhat of a unique
 11 offering for Blaze.
 12 You will see reference to XML manager insurance.
 13 This is a way of getting application data into Blaze.
 14 Most of these, the rest of these options, the
 15 scorecard, the reporting module, the rule analyst
 16 automation model, the reporting module became standard in
 17 Blaze. We just added them.
 18 Q. We saw in the license agreement with Chubb & Son the
 19 platform .NET as well as the platform Java?
 20 A. Yes, those are options as well.
 21 Q. Okay. So this portion of the pricing guideline ties
 22 back to that element of the license agreement.
 23 A. Yes.
 24 Q. Should we go to Section 7.3, does that make sense at
 25 this point, for deployment pricing?

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1 A. Yeah. We can talk about it. I mean, early on we
2 offered an option to license Blaze by the size of the
3 machine, the server machine it was installed on. So
4 servers have different sizes, and the primary metric at
5 this time for servers, before Cloud and virtual servers
6 came into being or predominantly into being, was the number
7 of CPUs and how many core processing units are on it.

8 The more there are, the faster the machine runs.
9 Basically you can install Blaze on it and run whatever you
10 want on that machine. That was this licensing model.

11 The only place that this actually took hold was
12 the U.S. Government. They like to buy this way. Most
13 clients prefer the named application license price.

14 Q. Okay. So then let's go to that named application
15 license 7.4.

16 Can you, as it says, "Business function pricing
17 scopes the use of the deployment license to a single named
18 project or business process within a specified business
19 unit."

20 You have project size, project license fee, and
21 then other categories as you see in this, on the left-hand
22 side.

23 I'd appreciate it if you would walk us through
24 the guiding information at the top of the table and then
25 the table itself.

1 A. Yeah, this is just referring to some of the options
2 that were add-ons.

3 Q. That we looked at on the prior page?

4 A. Correct.

5 Q. So we have looked at 7.4 Named Application, Pricing For
6 Deployment. And now I guess we should turn to 7.5,
7 Enterprise Business Unit Pricing Guidelines.

8 Would you describe that for us, please?

9 A. Yeah. So you've already heard about the fact that we
10 have these named application licenses as one way of buying.
11 Generally speaking, as clients buy more application
12 licenses from us and they spend for money, it becomes
13 easier for them to license an enterprise-wide license.

14 This like is outlined in the contract that you
15 saw, frees up the scope, so you don't have to count how
16 many applications that you have. It says and is restricted
17 to a scope definition. Specialty lines business or all of,
18 you know, Chubb & Son, division of Federal, but it's the
19 broad scope.

20 There is a number of factors that come into it
21 that are listed here up front. We do take into account how
22 many applications you are going to end up buying. So, you
23 know, if you're a bank, you're going to end up buying lots
24 of applications from Blaze Advisor because you are going to
25 find value for it in a number of places.

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1 A. Yeah. So the, the information at the top is
2 delineating the fact that the licenses for deployment, not
3 development, are all based on the scope or size of the
4 business project in question.

5 The latter part actually refers back to how that
6 sizing actually occurs, which there was a more
7 sophisticated way of introducing sizing after 2003, but the
8 last part of this is actually coming back to some of the
9 option pricing that was included on the previous page.

10 The table and the predominant element here is
11 that the table is repeated, but you can see, as I, said
12 Blaze Advisor and Decision System were separate products at
13 this time, and they merged later.

14 But ostensibly the way that the sizing worked was
15 this concept of, you size the application into small,
16 medium large or very large. And if it was a small, you go
17 across, your sale price was [REDACTED]. If it was a medium,
18 your sale price was [REDACTED].

19 Q. And then to be clear, this is before any negotiation.

20 A. Correct. This would be our standard pricing. This is
21 before anybody sat down and tried to get a better deal.

22 Q. Okay. I interrupted you, but did you finish?

23 A. Yeah.

24 Q. Okay. And then 7.4.1, Named Application, Business
25 Function Pricing For Blaze Advisor Options.

1 If you are a manufacturing company, you are
2 probably not going to buy a lot of application use from
3 Blaze Advisor. So those factors are taken into account, as
4 well as a bunch of others, but the core sort of pricing
5 mechanism is in the table. It's relatively simple and
6 straightforward.

7 If there was a \$2 billion entity that wanted to
8 license Blaze Advisor, it would be [REDACTED]. If it was a
9 \$4 billion entity, it would be [REDACTED], and so on down
10 the line.

11 Now, this is just the fee for the deployment, and
12 it is a perpetual fee. And this is the pricing that was in
13 place in 2003.

14 Q. And again, this is a starting place before negotiations
15 begin.

16 A. Correct.

17 Q. Now let's move to 7.6 to understand development seat
18 pricing.

19 A. So as we discussed and saw in the contract, the license
20 is split into the development seats and the deployment
21 seats. The development seats are the users that are sort
22 of integrating Blaze and writing rules or doing some kind
23 of technical deployment of Blaze.

24 Ostensibly, and you've seen it in the contract,
25 these are typically linked to the application, or they're

1712**1714**

1 minutes? But they would like to know in advance. Are we
 2 willing to do that?
 3 MS. GODESKY: I think generally, Your Honor,
 4 unless we're going to have like 15 minutes of argument
 5 about the demonstratives, that might get a little tight.
 6 THE COURT: Fair point.
 7 MS. GODESKY: Maybe 45 minutes.
 8 THE COURT: Yeah. Okay. We'll figure it out.
 9 Tell them 30 to 45 minutes for now. Go ahead.
 10 THE CLERK: Okay.
 11 THE COURT: And we will be back here at, straight
 12 up 9:00. We will be ready to go.
 13 (Recess taken.)
 14
 15 THE CLERK: All rise for the jury.
 16 (Jury enters.)
 17
 18 (In open court with the Jury present.)
 19 THE COURT: Be seated. Mr. Hinderaker, you may
 20 proceed.
 21 MR. HINDERAKER: Thank you.
 22 (N. WILLIAM PAUL WAID)
 23 DIRECT EXAMINATION
 24 BY MR. HINDERAKER:
 25 Q. Good morning.

1 yesterday in FICO's standard methodology to derive a fee.
 2 MS. GODESKY: Mr. Hinderaker, I'm sorry to
 3 interrupt, but I don't have a copy of this, either. I just
 4 have the blank page.
 5 MR. HINDERAKER: Well, that's not good.
 6 THE COURT: If it helps, if it helps, we can
 7 switch to the document camera.
 8 MR. HINDERAKER: 1090.
 9 MS. GODESKY: Okay.
 10 THE COURT: Got it?
 11 MR. HINDERAKER: 1090 is a better copy.
 12 THE COURT: Okay.
 13 BY MR. HINDERAKER:
 14 Q. Yes. So maybe we'll get started yet.
 15 Explain for us, if you will, how this document
 16 relates to the guidelines that we went through yesterday.
 17 A. So we talked about application-based pricing. In order
 18 to come up with a standard way of actually having our sales
 19 force and our clients understand how we size applications
 20 so that they understand what's a small, what's a medium,
 21 and what's a large, soon after 2003 when the sales force
 22 started growing for this product, we created this chart.
 23 And this chart actually shows a billion logics and
 24 progressions in order for anybody to size what an
 25 application is, small, medium or large.

1713**1715**

1 A. Good morning.
 2 Q. We finished yesterday having walked through the pricing
 3 guideline, and now I would like to start with the next
 4 component of pricing. And if you would go to the Exhibit
 5 0616, please?
 6 And, Mr. Mayleben, would you go to slide 2,
 7 please.
 8 Do you have it there?
 9 A. It's a blank page.
 10 Q. Well, that's not so helpful. Here is the rest of it.
 11 A. Thank you.
 12 Q. This exhibit -- it's also same the document as 1090,
 13 for the record for what it's worth, but this exhibit
 14 slide --
 15 Not that slide, please. Slide 3.
 16 This exhibit is now on the screen. And the
 17 document that you have in front of you is, what, three
 18 pages, correct?
 19 A. Correct.
 20 Q. Yeah. So the purpose of having this up on the screen
 21 is to go through each of the pages and ask you to explain
 22 them.
 23 But before we go to the pages, if you would put,
 24 give us the context of how this document, sizing matrix and
 25 the other two pages, relate to what we were speaking about

1 Q. All right. And now the page that's on the screen,
 2 application sizing matrix, if you would describe how to
 3 interpret this and how to use it?
 4 A. Sure. Let's, let's just start with an overview of how
 5 to read this first, and then we can double click into some
 6 specifics.
 7 You will see across the top where it says, small,
 8 medium, large and very large. That corresponds to the
 9 application size. Again, the intent here is just to figure
 10 out whether or not if an application is small, medium,
 11 large or very large.
 12 If you look along the left side of the document
 13 from top to bottom, there is [REDACTED] that actually go
 14 into determining if it's small, medium, large or very
 15 large. You must meet the minimum criteria in each column.
 16 Essentially what that's saying there, that first line, is
 17 that if, if all the criteria does not fit in a medium, you
 18 cannot be a medium. If some of the criteria spills over
 19 into a large, you must be a large. If it spills over into
 20 a very large, you must be a very large.
 21 The first criteria across the top is what we're
 22 referring to as [REDACTED] And you will see the very first
 23 segment of [REDACTED] here under small is [REDACTED]
 24 [REDACTED]. That's the
 25 first characteristic.

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1 in a short period of time, there is a lot of work to be
2 done in a short period of time.
3 Am I going too fast?
4 Q. Well, thank you for --
5 A. I just realized that. I'm sorry.
6 The last one here is [REDACTED].
7 You might have heard that our RMA for business users is --
8 it's not limited. So you have to, you have to pay for the
9 development seat, but you don't have to pay for the RMA or
10 the business user interfaces. [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED] That's eight. You might
15 ask, Where is the ninth? It's the bottom row down here
16 where there is [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED] These particular types of hardware
24 are very high-end, expensive. They process very quickly
25 and, therefore, to measure the value you're getting out of

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1 the software.

2 Q. Okay. Thank you.

3 Now let's go to the next page of this

4 Exhibit 1090. Now we have -- well, as we all see, there is

5 some dollars under the small, medium, large and very large

6 categories.

7 Would you explain how this applies to the

8 standard FICO methodology?

9 A. Yeah. The 2003 pricing that you saw is reflective of

10 what's here with one exception. The large size pricing at

11 the time of this publication increased from [REDACTED]. We

12 discovered early on that we could get more value out of a

13 large for the use of Blaze Advisor, so we did increase that

14 price at the time of this publication.

15 What happens after this at this period of time,

16 we, we have a quoting process that we follow. We

17 actually -- in order to explain this pricing, we created a

18 fancy spreadsheet within Excel that takes all these very

19 complicated number of things and puts them in line items so

20 that you can see exactly how the pricing comes out. And

21 it's transparent. It shows you all of the pricing, but you

22 just check which one you want and it fills in the total on

23 the left side.

24 This pricing sheet, the sizing grid, and this

25 pricing grid that you see here, this actually gets attached

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1 to the back of that spreadsheet activity for salespeople.
 2 It does not go to the client, but it is part of the
 3 workbook that the salespeople use, and this actually
 4 reflects the pricing. So you will see here that there is
 5 small, medium, large and very large, and you will see that
 6 reflective in the perpetual pricing license of [REDACTED].
 7 Underneath that you will see the high performance, which is
 8 the compiled sequential option. If you end up buying that,
 9 there is an incremental fee for that.

10 And then underneath that, if you remember from
 11 yesterday, there is the development seat costs, and they
 12 are in those packs of [REDACTED].

13 Q. Why do you price the development seats in these pack
 14 levels?

15 A. It's -- if you, if you look at the unit price that was
 16 in 2003, it was [REDACTED] per seat. So if you take [REDACTED] seats
 17 times [REDACTED] it's \$[REDACTED]. We're offering here for [REDACTED]
 18 If you take [REDACTED] times [REDACTED] it's [REDACTED]. We're offering it
 19 for [REDACTED]. We're just giving it a little incentive for the
 20 client to buy a little bit more when they're buying.

21 So if they're on the edge and they need, you
 22 know, [REDACTED] seats, maybe they will just say, ah, I want to
 23 go to [REDACTED]. It's not that big of a jump to go from [REDACTED] to
 24 [REDACTED] if they think they're going to need them. That's the
 25 purpose of it.

1 annually. The [REDACTED] -- this document was created
 2 shortly after 2003. [REDACTED] was changed in February of
 3 2015 to be [REDACTED] across all FICO products, and it
 4 became mandatory.

5 Q. The licensing of maintenance and support became
 6 mandatory?

7 A. Yes.

8 Q. Okay.

9 A. The support became mandatory, yes.

10 Q. And then the fee was standardized across all products
 11 at [REDACTED]?

12 A. [REDACTED].

13 Q. Let's go to -- let's go to this page of the

14 Exhibit 1090. Sizing definitions. If you would go through
 15 this with us, please.

16 A. Yeah. This is referring back to the words that were
 17 used on that sizing grid. In order to avoid ambiguity or
 18 uncertainty about how to read that sizing grid, we provided
 19 definitions of terms. These terms are actually used in
 20 that sizing grid, so you need to understand what they mean
 21 in order to use the grid. So, for example, [REDACTED], it's
 22 the generalized extent [REDACTED]

[REDACTED]
 [REDACTED] sort of --

25 If the application is going to be used over here

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1 Q. Okay. And this -- just to make clarification, at least
 2 for me -- the small, medium, large and very large pricing
 3 that's on this document and this page, is that also the
 4 standard pricing as of today -- or as of 2016?

5 A. We have not changed it. It still is the standard
 6 pricing. There were several proposals to change it. We
 7 decided not to. It is still the pricing today.

8 Q. Then with respect to -- at the bottom it says,
 9 "Deployment license annual maintenance and support." It's
 10 calculated at [REDACTED] of net license amount annually.

11 I guess I have two questions. One is to explain
 12 how that's priced against the license fee -- it might be
 13 self-explanatory, but if you could detail that out -- and
 14 then whether [REDACTED] is the percentage that was used in
 15 2016.

16 A. Yeah. So, first of all, the calculation -- let's just
 17 say that we priced a small application. That's what the
 18 client was going to buy. There was no discount. So
 19 they're paying \$[REDACTED] for it.

20 The maintenance is calculated on top of that fee
 21 as [REDACTED] of that fee. So [REDACTED] times [REDACTED]
 22 would be roughly \$[REDACTED]. \$[REDACTED] paid annually would be
 23 that maintenance and support. That maintenance and support
 24 is what gives our clients the ability to download new
 25 versions and call us or e-mail us for help, and it's paid

1 in a [REDACTED], say, [REDACTED]
 2 [REDACTED] that actually brings the scope of use [REDACTED]. If
 3 that particular application is used to cross just [REDACTED]
 4 [REDACTED], say, D&O insurance, then it gets a little bit
 5 broader. Right? If it's used [REDACTED]
 6 [REDACTED] like a [REDACTED] [REDACTED] then it gets broader.
 7 Eventually if you have applications used across [REDACTED]
 8 [REDACTED] meaning it's used for purposes of [REDACTED]
 9 [REDACTED], then it would be an
 10 [REDACTED]. That's the definition there.

11 The rest of these terms really refer back to sort
 12 of like rule transaction, we mentioned that, any indication
 13 of the Blaze Advisor rules server, independent of the
 14 number of rules. Okay?

15 Number of [REDACTED]. The total
 16 number of [REDACTED] that will have access to
 17 the application, which is -- which invokes Blaze Advisor
 18 rules server. So it's not about who is using Blaze
 19 Advisor; it's about who is using the application in which
 20 Blaze is embedded. These are sort of the definitions of
 21 the terms that are used in the sizing grid.

22 Q. Thank you. And now with the sizing, I would like to
 23 turn to what's in evidence as Exhibit 517. We can go --
 24 oops. Okay?

25 A. Don't make this easy. Okay.

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1 Q. All right. The screen is on, too.
 2 So we saw this with Mr. Ghislanzoni's testimony,
 3 and it has information regarding the use of Blaze Advisor.
 4 Is this, is this kind of information relevant to
 5 you as you -- using your standard methodology for pricing
 6 of Blaze Advisor?
 7 A. Yes. It includes several useful pieces of information.
 8 Q. Okay.
 9 A. It specifically highlights here the [REDACTED] in the
 10 first column. And as you move across, it's [REDACTED]
 11 [REDACTED]
 12 [REDACTED] These are the parameters that are in the sizing
 13 grid.
 14 Q. I would like to -- what I'm going to ask you now to do
 15 is -- we will use the slides, but ask you now to do is to
 16 take that pricing matrix, apply it to the information
 17 regarding Blaze Advisor's use at the defendants, in terms
 18 of going through this pricing analysis. So explain,
 19 explain how that, explain, explain the process, the
 20 methodology for pricing, and we will just go through the
 21 information on the slide.
 22 A. Well, what we would do is, we would actually pull off
 23 the information from this spreadsheet for each of the
 24 individual applications identified. I think what is
 25 indicated here is the applications that we would target to

1 around that. Automated Renewal Process, here again, we'll
 2 assume it's [REDACTED] CUW, [REDACTED] and so on.
 3 Q. And the next column over, how does that apply to the
 4 methodology?
 5 A. This is also in the sizing grid, if you recall. The
 6 [REDACTED] is a parameter that actually determines the
 7 size of the application.
 8 Q. Okay. Let's go to the second page of 517.
 9 A. So you will see at the top here it says real-time.
 10 And, remember, there is a real-time and batch and real-time
 11 or batch, one of the two.
 12 In this particular case, we're, we're getting a
 13 [REDACTED]
 14 [REDACTED] We're going to have to do a little math here
 15 because the rule sizing grid says [REDACTED]. So we're going
 16 to have to take this number and do some math to get to the
 17 [REDACTED].
 18 Generally speaking, when we get numbers [REDACTED]
 19 [REDACTED] because this is -- they operate 7 by 24, but the
 20 majority of their -- in sort of these worlds in banking and
 21 insurance, they operate on [REDACTED]. So we generally
 22 use 20 days as the basis to take this number of [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 And you will see here that, if you link back,

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1 pull off --
 2 Q. Okay.
 3 A. -- listed from CSI Express, DecisionPoint, Automated
 4 Renewal Process, CUW, IRMA, TAPS, Premium Booking,
 5 Evolution, Adapt/ABL and EZER.
 6 We would also look at the individual countries
 7 that are on here. You will see that most of them are U. S.
 8 There is one that is U. S. and Canada. There is one that
 9 is Europe and Australia and then Canada and just Europe.
 10 That's where we would start.
 11 Q. Let's go to this step.
 12 A. There is two reasons to pull this information off here,
 13 [REDACTED]. First of all, [REDACTED]
 14 [REDACTED] is one of the sizing
 15 parameters in the sizing grid, as we saw.
 16 The other reason for pulling [REDACTED]
 17 [REDACTED] is -- and that comes back to the development seats. So
 18 they are priced separately from the small, medium, large,
 19 so we will need to know how many developing seats will be
 20 needed here in order to perform a pricing exercise.
 21 You will see that there is [REDACTED] for CSI
 22 Express. It's a little unclear here. There is [REDACTED]
 23 for DecisionPoint. There appears to be four separate sort
 24 of uses of DecisionPoint here broken down. We will just
 25 assume that it's [REDACTED] because we don't really have clarity

1 you'll see that DecisionPoint has a [REDACTED]
 2 [REDACTED]s and so does CUW.
 3 Q. This column, how does that relate?
 4 A. So this is where the batch comes in. You'll see that
 5 this is [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 Q. Okay. So those are the columns that we've looked at in
 10 terms of 517 as relates to your methodology per pricing
 11 with the matrix and the sizing.
 12 So next go focus in on -- I think you've talked
 13 about each of these now.
 14 A. Yes.
 15 Q. So let's apply them, and we'll start off with CSI
 16 Express. I think I'm going to ask you to go through the
 17 methodology in detail with CSI Express, and then we'll go
 18 through the rest of them without every -- touching base on
 19 every step.
 20 Here we have CSI Express against your sizing
 21 matrix. And why does -- well, explain, explain that
 22 decision.
 23 A. Yes. CSI Express is actually for the specialty lines
 24 of business, so there is multiple lines of business in
 25 that, but it is in the division of the specialty line. So

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1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED] that's
 6 a large.
 7 [REDACTED]
 8 A. So you will see that the [REDACTED]
 9 rules. And if you go to the large, you're capped at [REDACTED]
 10 [REDACTED] Since it's more, you have to move to the next
 11 category, which becomes [REDACTED] That actually puts it
 12 into a very large at this point in time.
 13 Q. [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]. So a relatively small use in batch
 23 world.
 24 Q. So overall in the pricing matrix, what's the size that
 25

1 A. It's a very large.
 2 Q. CUW?
 3 A. Again, very large.
 4 Q. Premium Booking?
 5 A. Very large.
 6 Q. TAPS?
 7 A. This would be a small.
 8 Q. Applying the same criteria?
 9 A. Yes.
 10 Q. IRMA?
 11 A. This would be a large.
 12 Q. CIS Claims linked to CSI Express?
 13 A. This would be a very large.
 14 Q. DecisionPoint -- we did DecisionPoint. This is
 15 Cornerstone. Similar?
 16 A. It is similar to what is inside of DecisionPoint. We
 17 are a little uncertain from the information we have here,
 18 so we took the more conservative route of actually just
 19 calling it a medium, because we didn't have enough
 20 information to really justify that it's a large or a very
 21 large, but what we did know about it, we knew it was at
 22 least a medium.
 23 Q. Evolution.
 24 A. This is a very large.
 25 Q. This is the Canadian Evolution. Broker Site, also in

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1 you price CSI Express at?
 2 A. Well, it would be sized at a very large.
 3 Q. And we would go back to the earlier sizing sheet that
 4 we saw where it puts the price at each of the levels.
 5 A. Yes. When you take this very large, you can then go to
 6 that pricing sheet and figure out what that standard price
 7 would be.
 8 Q. Have you done this analysis, then, on each of the, on
 9 each of the applications?
 10 A. Yes, that analysis was done across all the information
 11 that we had available.
 12 Q. So this is Automated Renewal Processing. Just to
 13 confirm, the process that you used, the steps that you
 14 took, were like what you've just described for CSI Express?
 15 A. For each and every one of them, reading the parameters
 16 at the top, finding the locations, circling which one it
 17 actually fits to, and then whatever the largest one is,
 18 that becomes the size. In this case, Automated Renewal
 19 Process is a large.
 20 Q. Okay. With respect to DecisionPoint, using the matrix,
 21 the decision was --
 22 A. Very large.
 23 Q. The next application we have here, Profitability
 24 Indicator. And what did the pricing matrix say with
 25 respect to that?

1 Can[REDACTED]da.
 2 A. Yes. This was linked to Evolution and, therefore, a
 3 very large.
 4 Q. Let's go to Adapt-ABL.
 5 A. That came out to a large.
 6 Q. Now Evolution in Australia?
 7 A. And that came out to a small. The reason we went with
 8 a small is because it was a pilot application. It never
 9 went into full production use.
 10 Q. EZER?
 11 A. That's a large.
 12 Q. And then Exari that was linked to EZER?
 13 A. That came out to a large.
 14 Q. So we've sized these applications. Now standard
 15 application pricing for FICO, you would apply those dollar
 16 amounts to each of the applications. Small would be at
 17 that level, medium, large and very large, as you've
 18 explained.
 19 Would you explain the difference, please, between
 20 the numbers that you have for perpetual license and the
 21 numbers that you have for annual?
 22 A. So our pricing practices and policies around annual, if
 23 you recall from yesterday where you actually have a period
 24 of time that you're licensing the software, is to take the
 25 perpetual license and calculate the annual fee from the

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1 perpetual license. So we always start with the perpetual
2 license fee. The conversion of that perpetual license to
3 an annual license is a multiplier of [REDACTED]

4 So you take a small at [REDACTED] perpetual. You
5 multiply that by [REDACTED] and you come up with [REDACTED] per
6 year. If you take the medium and you multiply that by [REDACTED]
7 you come up with [REDACTED] per year. The large, it's [REDACTED]
8 times [REDACTED] you end up at [REDACTED] The very large at [REDACTED]
9 [REDACTED] times [REDACTED] and you end up with \$[REDACTED] per year.
10 Those are the license fees annually.

11 Maintenance is on top of that, which is [REDACTED]
12 [REDACTED] So for a small, your maintenance is [REDACTED] For
13 a medium, it's [REDACTED] For a large, it's [REDACTED] For a
14 very large, it's [REDACTED]

15 You add that annual license fee and the annual
16 maintenance fee, and you end up with the annual fee that
17 you pay for a small, medium and large. The small is
18 [REDACTED] The medium is [REDACTED] The large is [REDACTED] -- I'm
19 sorry -- [REDACTED] And the very large is [REDACTED] per year.

20 Q. And now that was with respect to deployment license?

21 A. That is the deployment fees, yes.

22 Q. Okay. Separate from that, do you charge for the
23 development?

24 A. Correct. That would be the lower chart.

25 Q. And if you would go through that, please.

1 is this concept of Java and .NET. It's possible to have
2 two or three different platforms. So the way our pricing
3 works is you take the deployment fee that you would look up
4 as our standard pricing, and you take [REDACTED] of that if
5 you have a second platform. So if you have Java and .NET,
6 you take the original fee. [REDACTED] of that, that's the
7 second platform.

8 So as represented here is two multi platforms,
9 where the fee for the second platform is [REDACTED] of the
10 deployment fee. And then you see a various number sets of
11 development seats, and those development seats are pulled
12 from the packs that you saw on the previous chart. And
13 then you just simply do the math and add them up, and you
14 come up with an annual fee for these various configurations
15 of large, very large, medium, small and the associated
16 development seats.

17 In this particular case, you can see those annual
18 fees listed in the far right column.

19 Q. So the math on this one, \$8,690,673 per year?

20 A. Yes, that would be the total per year.

21 Q. Does FICO as a standard matter license, on a fixed
22 term, license for less than a year?

23 A. No, we do not license for less than a year. We license
24 for [REDACTED] years. The most common
25 is [REDACTED] years.

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1 A. So rather than take you through the individual math as
2 I did before, if we look across the [REDACTED]
3 [REDACTED], the annual fee for the [REDACTED] calculates to
4 \$[REDACTED] per year. The [REDACTED] calculates to [REDACTED] per
5 year. The [REDACTED] calculates to [REDACTED] per year, and the
6 [REDACTED] calculates to \$[REDACTED] per year.

7 Q. And the conversion between perpetual and annual in this
8 instance is, as well, is the [REDACTED]?

9 A. Yes. It's the same process. Perpetual license times
10 [REDACTED] Then on top of that license fee, you add [REDACTED]
11 maintenance.

12 Q. Well let's, let's see what that looks like. We're just
13 going to assume a portfolio of applications like what we
14 just described and look at what that, what that would be
15 standard methodology on an annual fee basis.

16 And does this represent the result of that?

17 A. So, yeah, there is a number of applications listed I
18 see here on the left, which represents the application size
19 to very large all the way down to small. The annual
20 deployment fee would be coming off of that previous chart
21 we just looked at. If it's a large, small, medium, that
22 would be where you pull that number from. The multi
23 platform is not something we've discussed yet.

24 Q. That's true.

25 A. So you might remember that in the pricing grid, there

1 Q. And with the, with the multi-year annual -- with the
2 multi-year term license, does FICO protect itself at all
3 with respect to inflation?

4 A. We do. We generally apply CPI in our contracts. So
5 we -- as you've seen since 2003, we haven't really changed
6 our pricing from that application size, barring that one
7 large from [REDACTED]. That was the only change. But, you
8 know, things do get more expensive, as we found out very
9 recently in our economy.

10 CPI is an index that's commonly known, consumer
11 price index, and it's used to allow us to go back every
12 year and increase our prices for variable things like, for
13 example, annual fees or maintenance and service.

14 Q. Was that -- was any consideration given to that in
15 putting together this example of pricing?

16 A. No, because I'm actually not talking about a contract
17 here. I'm talking about our standard pricing. This is
18 just our standard pricing. So this is for these individual
19 configurations, for these number of development seats, this
20 is what those annual fees would be.

21 I haven't actually put them into a term yet. I
22 don't know if it's one year, two year, three year or five
23 year. But eventually if they end up in a contract, they
24 would have a term underneath it that says that it's subject
25 to CPI or consumer price index increases.

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1 Q. Let's look at the next slide that assumes some varying
 2 terms, varying years, number of years of fixed term.
 3 I take it, as this slide, we start with the
 4 annual fees that we just looked at. You've displayed an
 5 array of years on this slide?
 6 A. Yes. It would be helpful if I could just see the
 7 previous slide briefly.
 8 Q. Sure.
 9 A. Okay. Thank you.
 10 Yes, it appears these annual fees are carried
 11 forward from the previous calculation. So these would be
 12 the fees that would come out from our standard pricing on a
 13 yearly basis, an annual basis. And this exhibit is
 14 demonstrating various years from, anywhere from one year or
 15 two, four, five, seven and ten years.
 16 Essentially for standard pricing you would just
 17 simply, you know, take the annual fee times the years and
 18 get to your projected total amount of fee that you would
 19 pay over that period of time. Of course, there is no CPI
 20 applied to this. This is just straight math to the years
 21 and the annual price.
 22 Q. So with this, these assumptions, this array of
 23 possibilities, the math simply is standard annual fee for
 24 the fixed terms that we're assuming here, 49,714,705?
 25 A. For these fixed years, yes, that's correct.

1 buying that way, so it shifted to term-based licensing.
 2 We still have perpetual licensing. We still have
 3 annual or term-based licensing, but most of our licensing
 4 today is annual. In 2016 it was a mixed bag, and most of
 5 it was still perpetual moving to term, but it was moving
 6 and it was moving aggressively, but we have never actually
 7 taken an enterprise license and actually made that annual.
 8 At least to my recollection, unless I'm missing something,
 9 I don't think it's ever been done.
 10 Q. Okay. Well, with that background, I nevertheless would
 11 just like to go through the exercise --
 12 A. Okay.
 13 Q. -- a hypothetical, just assuming you would change --
 14 A. If we did it, you want to talk about the process.
 15 Q. Yeah, I want to talk about the process.
 16 So let's go to this slide.
 17 Standard Blaze Advisor annual ELA pricing. And
 18 annual because we're dealing with a fixed term. ELA
 19 pricing means Enterprise License Agreement, correct?
 20 A. That's what it stands for, Enterprise Licensing
 21 Agreement, yes.
 22 Q. So let's start, and just showing the exercise, this
 23 slide is assuming a 35-billion-dollar enterprise. With
 24 that assumption in place, would you explain this process
 25 for us?

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1 Q. Now, all of this pricing that we have been talking
 2 about from your methodology is annual fees on an
 3 application basis.
 4 A. Correct.
 5 Q. Now, FICO does also have a methodology that we saw
 6 yesterday in terms of pricing on a fixed term basis, but
 7 building from enterprise pricing parameters. Have I said
 8 that correctly?
 9 A. I'm not sure I understand the question.
 10 Q. I haven't said it so well.
 11 As a standard matter, when presented with a
 12 contract with a fixed term, does FICO approach the pricing
 13 of that contract on an application annual basis, as we
 14 discussed? Will FICO approach that process assuming an
 15 enterprise construct?
 16 A. I have never seen us approach an annual on an
 17 enterprise license.
 18 Q. Is there a business reason for that? Why?
 19 A. It's more around sort of the history of where our
 20 licensing has evolved to. Early on in the life of Blaze
 21 Advisor, we sold a lot of perpetual licenses. That's what
 22 the market demanded. We were interested in getting the
 23 revenues that the larger amounts that came with perpetual
 24 licenses upfront. As time went on, we became less
 25 interested in that and the market became less interested in

1 A. Okay. So assuming it's a 35-billion-dollar
 2 organization and it's for the entire organization, all 35
 3 billion, not for a piece of it, but the whole thing, the
 4 license fees are broken down into the deployment perpetual
 5 fee, the multi platform that we discussed earlier, if you
 6 have multiple platforms, perpetual fee and then the
 7 development license perpetual fee.
 8 So for 35 billion -- I'm not going to pull up my
 9 price sheet, I can, but I'm not going to pull it up -- we
 10 would go to the price grid that you saw and look for 35
 11 billion and extrapolate that off of that. It comes out to
 12 about [REDACTED] dollars for that perpetual license. We
 13 would take [REDACTED] of that to get to the multi platform.
 14 That would be [REDACTED].
 15 The deployment license fees are actually a little
 16 more complicated because we have four separate countries
 17 here. That means that you would need to get unlimited
 18 development seats for each of the four countries. So
 19 that's, starting at a minimum of [REDACTED] per country, times
 20 the four countries, is [REDACTED] for that fee.
 21 But you also have two of them that are multi
 22 platform. Typically, we would uplift that if it's
 23 unlimited. If it's not unlimited, we require you to buy
 24 both. If we have three .NET and three Java, you got to buy
 25 three and three, six total. On the unlimited case, we

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1 would actually just take [REDACTED] of that fee and uplift
 2 for that use, in this case two. That would come out to
 3 [REDACTED]. So your perpetual fees would be \$10,740,000.
 4 That's the standard price.
 5 Q. Can you translate that into an annual?
 6 A. Yes. So to get that into an annual, cut myself, [REDACTED]
 7 times that 10,740,000. Your license fee would be
 8 [REDACTED] of that license fee annually would
 9 be [REDACTED]. Combine them together, your annual fee for
 10 this enterprise license would be \$5,896,260.
 11 Q. And the next slide just assumes a different size
 12 enterprise at 3.5 billion. The process is the same?
 13 A. Process is the same. You have two big differences
 14 here. One is the size of the organization has now been
 15 reduced to one tenth or 10 percent of that, 3.5 billion.
 16 You have three countries, and you have one multi platform
 17 in that calculation, but you would come up with a perpetual
 18 license fee of [REDACTED]. Convert that to annual with
 19 maintenance at an annual fee of [REDACTED]
 20 Q. So if we were going to just take these assumptions
 21 using our, using the enterprise pricing and reducing it
 22 down to the annual fixed fee terms, that's what we're
 23 assuming some years here, so at the 35-billion-dollar
 24 enterprise, your standard annual fee, if it was five years,
 25 it 29,481,300?

1 Q. Let's assume that.
 2 A. Okay. That's very different. It's material and
 3 important in the discussions.
 4 Q. Understood.
 5 A. In a fixed term negotiation where the relationship is
 6 not going to go any further, the biggest factor is, that's
 7 the extent of my relationship with that client. I'm not
 8 looking beyond. I don't have a long-term value proposition
 9 with this client where I'm getting more services, more
 10 maintenance, more product sales. I am just negotiating for
 11 a period of time, and then they're going to stop using it.
 12 That's actually reflected in this chart in two
 13 different avenues here, right? So if I'm not going to sell
 14 anything more to this client or the client doesn't use
 15 other Fair Isaac products or FICO products, then that has
 16 an upward pressure on my negotiation. I'm going to remain
 17 firm. This is my one opportunity to negotiate value out of
 18 the use of my software. I don't have an opportunity after
 19 this.
 20 Q. Take -- what are the assumptions under which there
 21 would be -- the licensee would be able to put pressure on
 22 you to reduce your price?
 23 A. Yeah. So the licensee, conversely, would not want to
 24 be paying larger fees for the software. They're going to
 25 want a lower fee. And what they have working for them is

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1 A. That's correct.
 2 Q. And under the other exercise of an enterprise a tenth
 3 the size, 3.5 billion, we're assuming on this side six
 4 years, so the math is 10,013,760?
 5 A. That looks right, yes.
 6 Q. Okay. And so we have two different fixed term examples
 7 based upon that pricing approach.
 8 Now, this is, this is -- you know, we've
 9 concluded FICO pricing methodology. We haven't started any
 10 negotiations with the licensee at this stage?
 11 A. That's correct. This is just our standard pricing.
 12 Q. Now, would you just share with us the experience that
 13 you have had in terms of negotiating with the licensee for
 14 fixed term licenses?
 15 A. The extent of that?
 16 Q. Not all of it, but we're going to take two different
 17 assumptions, if you will. The first assumption I would
 18 like you to take and explain your experience is, assume a
 19 contract with the client has come to an end and the client
 20 wants to negotiate a new contract for a fixed term.
 21 I would like to, if you would, what are the
 22 factors that in your experience have played into the
 23 negotiations that affect the price of the license fee?
 24 A. Well, the first thing I would ask is, it's a fixed
 25 term, and at the end of that term, the relationship ends?

1 how easy is it for them to turn off the software, how
 2 quickly can they turn off that software. Right? So if
 3 it's relatively easy and they can turn it off immediately,
 4 they're in a very strong negotiating position for price.
 5 They can just say, you know what, no, I'm not paying that,
 6 we'll turn it off, I'm done. Conversely, if they're in a
 7 position where they can't turn that off, then they're going
 8 to want to negotiate to other terms. And the most logical
 9 one that they would go to is a shorter period. I'm going
 10 to get off of you as soon as possible because I'm not going
 11 to pay those kind of fees.
 12 So this is sort of a push/pull of a negotiation,
 13 right, because the longer they stay on the software the
 14 more value we're going to extract out of that negotiation.
 15 So it really comes down to a measure of, well, what is the
 16 term, right, and of that term what are we actually going to
 17 negotiate from a deviation or a discount off of that
 18 standard pricing.
 19 So, generally speaking, the first year or two,
 20 there is really little incentive for us to discount. It's
 21 going to take at least a year, if not two, for clients to
 22 move from a position of using the software to not using the
 23 software. If they actually want to extend that to [REDACTED]
 24 [REDACTED] years, we would sort of back off of that list
 25 price. We would start discounting.

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1 To sort of put a set of parameters around that,
 2 you know, if you're at a [REDACTED] period of time, a [REDACTED]
 3 [REDACTED] on that would be essentially, I'm going to
 4 sell you a [REDACTED] and give you the [REDACTED] for
 5 free. So I wouldn't go that far. I would pull back into
 6 something more like the [REDACTED] kind of range. That
 7 would be where I would go with that. If they wanted to
 8 extend to [REDACTED] maybe I would bump that [REDACTED], maybe a
 9 [REDACTED] higher than that, depending on the circumstances, but
 10 it really depends on a number of these factors here.

11 But the primary driver is, Do I have future
 12 business? Do I have current business. That's the biggest
 13 thing from the licensor side. And then the term. But what
 14 is offsetting that from the licensee side is, look, I don't
 15 need that, so I'm not going to pay that. Therefore, I'm
 16 going to take extra effort to not pay that. And those are
 17 predominantly driven by the scope of use, how quickly can
 18 they get off or turn it off.

19 Q. Okay. Then let's take the other assumption, that there
 20 is a future with the client. How does that different
 21 assumption affect the negotiating tactics and pressures
 22 that you can apply or that the licensee applies against
 23 you?

24 A. In the new business, well, probably the biggest
 25 contributor from our perspective to where we bring the

1 that you negotiate in life. The more you buy, the more
 2 pricing leverage you have. You're going to get a bigger
 3 discount.
 4 If you offer reference in case studies, you know,
 5 we're going to be a little more sensitive to the price. We
 6 don't actually include a particular discount for this; but
 7 if you're going to do it, we would be a little more
 8 sensitive around what we actually price to and negotiate
 9 to. And duration. Duration does play a factor in the
 10 business, it's less so here because we're looking at a
 11 long-term relationship. If you want a contract with us for
 12 two years, fine; one year, fine; five years, fine; but the
 13 anticipation is that there is business coming from you
 14 after that.

15 Q. Good. Let me show you the last slide that we have.
 16 And I think it's trying to put those two considerations or
 17 two scenarios, better said, that you just described. And
 18 what do you intend to convey by this slide?

19 A. I think it's reflective of scale of where we would go
 20 with discount. So as I mentioned before, if I'm
 21 negotiating a fixed term and that's the extent of my
 22 relationship, then I'm less inclined to go to higher
 23 discounts because I'm extracting the full value of that
 24 negotiation from that one transaction and that one period
 25 of time.

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1 price point into, and actually also in this case from the
 2 licensee is, what is the long term value to FICO, how much
 3 business are we going to do with this client? We saw that
 4 previously on the transition side. It plays into the new
 5 business side equally and actually maybe even more so than
 6 in the previous scenario of a fixed period of time.

7 We have a number of clients that buy a lot of
 8 products from us, and they carry a lot of weight with us.
 9 When they speak, we listen. And so the number of products
 10 in the revenue stream we have from a particular client has
 11 a big factor; and if they come in and demand more discount,
 12 we pay attention. We negotiate, but we pay attention.

13 If, equally, you know, there is a large number of
 14 opportunities on that table of sales that we can see coming
 15 from this client, we're going to pay attention, and we're
 16 going to be a little more flexible in our price. In
 17 particular, this has to do with not just what it is today,
 18 but what it is five years from now. It matters. We have a
 19 lot of our clients today who are negotiating much bigger
 20 contracts with us on our new stuff, which is, we want to
 21 retain those customers.

22 Another factor is the size of the transaction.
 23 Very clearly, you know, you've seen that in the pricing
 24 guide, sort of the more you buy, the more you're allowed to
 25 discount. And it's, it's true across pretty much anything

1 If I'm -- so I would limit it. You know, we
 2 talked about [REDACTED] kind of discounts. That's
 3 typically what I would see in these scenarios. But if I
 4 went further down discounting for new business, yeah, maybe
 5 I'd go to [REDACTED]. It's possible. It depends on
 6 the circumstances. So this chart just represents a
 7 relative scale there of how far we would go in a
 8 negotiation.

9 MR. HINDERAKER: Mr. Waid, thank you for your
 10 time.

11 MS. GODESKY: May I proceed?

12 THE COURT: You may.

13 MS. GODESKY: Thank you.

14 CROSS EXAMINATION

15 BY MS. GODESKY:

16 Q. Good morning, Mr. Waid.

17 A. Good morning.

18 Q. My name is Leah Godesky and, I represent the defendants
 19 in this case. And you know that because you have been
 20 sitting here in court with us since the beginning of trial,
 21 right?

22 A. Correct.

23 Q. You previously sat for two depositions in this case
 24 back in 2019, correct?

25 A. Yes.

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1 Section 3.1 of the contract we cannot let DWS have any
 2 access to Blaze, right? You didn't say that.
 3 A. I did not, no.
 4 Q. You were fine with the idea that FICO would continue to
 5 be responsive, correct?
 6 A. I was fine that we would continue to be responsive,
 7 yes.
 8 Q. And DWS wasn't sneaking around and trying to hide that
 9 it was accessing Blaze, right?
 10 A. Absolutely not.
 11 Q. We saw that folks were e-mailing FICO from at DWS.com
 12 e-mail addresses, right?
 13 A. Absolutely.
 14 Q. And they were joining FICO in chat rooms and
 15 identifying themselves openly, correct?
 16 A. Absolutely.
 17 Q. Okay. We can take that down. Thank you.
 18 Now I want to talk about pricing of Blaze
 19 licenses. Okay?
 20 A. Okay.
 21 Q. And as we discussed earlier, you understand that FICO
 22 is suing Federal for breach of contract in this case,
 23 right?
 24 A. I'm not a lawyer.
 25 Q. But, you know, you went through all those contract

1 Q. Right.
 2 A. Our standard pricing.
 3 Q. Relative to damages?
 4 A. Yes.
 5 Q. Okay. I'd like to take a look at P517. This is one of
 6 the documents you just looked at with Mr. Hinderaker.
 7 And you walked through some of the information in
 8 this chart of Chubb use of Blaze, right?
 9 A. Correct.
 10 Q. And you were using it in the context of talking about
 11 how you do application-based pricing at FICO, right?
 12 A. Sizing.
 13 Q. Sizing. And this document is something that FICO
 14 received in litigation in 2018 or 2019, right?
 15 A. I'm not sure when it was received.
 16 Q. But you understand it was received as part of the
 17 litigation?
 18 A. It was post termination, so yes.
 19 Q. Okay. When potential customers are negotiating a Blaze
 20 license and the pricing, you don't typically have all of
 21 this detailed information, right?
 22 A. No, we don't.
 23 Q. No.
 24 A. Typically we have less information, yes.
 25 Q. You generally don't know how many [REDACTED] and

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1 provisions with Mr. Hinderaker yesterday because you
 2 understand there is a claim in this case that Federal
 3 breached Section 10.8, right?
 4 A. I think the lawsuit is much bigger than just the
 5 breach, but I'm not a lawyer.
 6 Q. But you understand there is a breach claim, right?
 7 A. I understand that there is a copyright claim, and I
 8 understand that there is a use claim, yes.
 9 Q. And you told me a few minutes ago when we started this
 10 examination that you also understood FICO is suing for
 11 breach of 10.8, the assignment provision, right?
 12 A. We, we terminated the agreement because of 10.8. I
 13 don't know about this suing for. I wasn't part of the suit
 14 filing, so I can't comment on what we sued for.
 15 Q. Okay. Fair enough. So do you generally understand,
 16 Mr. Waid, that the idea here is that if FICO proves a
 17 breach of contract, it's asking for damages in the form of
 18 lost license fees. Do you generally understand that?
 19 A. Oh, yeah, that I understand.
 20 Q. Okay. And that's why we're talking about how FICO
 21 prices Blaze licenses?
 22 A. That's correct.
 23 Q. It goes to the damages claim, right?
 24 A. Well, the jury gets to decide what that is. I'm just
 25 providing pricing.

1 [REDACTED] is running in your software when you're
 2 negotiating pricing?
 3 A. We have a better understanding of [REDACTED] but
 4 [REDACTED] is tough.
 5 Q. You don't know like [REDACTED]
 6 [REDACTED], right? They don't usually turn that over?
 7 A. That's one of the stronger metrics we usually get,
 8 yeah.
 9 Q. But you can agree, Mr. Waid, you don't get this level
 10 of detail from every customer you're negotiating with?
 11 A. I already agreed to that, yes.
 12 Q. And in fact, you didn't know how Chubb was using Blaze
 13 until 2018, 2019 when you received this as part of the
 14 litigation, right?
 15 A. I didn't know the full extent of what Chubb was using
 16 until I got the proposal letter in February.
 17 Q. And usually you're mainly pricing off of publicly
 18 available information, right?
 19 A. Oh, no. We actually get the information directly from
 20 the client. We take it at face value that they're acting
 21 in good faith, and we use that information.
 22 Q. You actually technically have the information that --
 23 A. Yes, we do. Yeah, yeah, yeah. For the enterprise
 24 licensing. Sorry. Yes.
 25 Q. Okay. Now, as you established with Mr. Hinderaker --

1812**1814**

1 is already in evidence as Defendants' Exhibit 4.
 2 Do you know, Mr. Waid, [REDACTED] is a bank
 3 holding company. Does that sound right?
 4 A. Yeah.
 5 Q. And they were acquired by [REDACTED]?
 6 A. Eventually, yes.
 7 Q. Okay. We'll just wait for D4 to come up on the screen.
 8 No problem.
 9 Okay. We have D4, and if you look at the top,
 10 Mr. Waid, this is a copy of the Blaze license agreement
 11 that FICO executed with [REDACTED] in 2005, correct?
 12 A. Correct.
 13 Q. And I want to look at page 8 where we can see the term.
 14 Do you see it says, '[REDACTED]'
 15 '[REDACTED]'
 16 '[REDACTED]'
 17 '[REDACTED]' right?
 18 A. Correct.
 19 Q. So this is a perpetual license like Chubb's.
 20 A. Correct.
 21 Q. And then if we could go to page 13 of the document and
 22 look at Exhibit A, we can see that FICO charged [REDACTED]
 23 [REDACTED] for a perpetual
 24 enterprise-wide license, correct?
 25 A. That is correct.

1 the license is perpetual for development and deployment,
 2 right?
 3 A. That's what it says.
 4 Q. And the scope is defined as use solely within client's
 5 [REDACTED], right?
 6 A. That's what it says, yes.
 7 Q. So this is not an enterprise-wide license.
 8 A. It is not, no.
 9 Q. Right. Let's go to page 5. And if we go to Section
 10 5.4 of Exhibit B on page 9, sorry, do you see there is a
 11 section called Enterprise License Option?
 12 A. Correct.
 13 Q. So it says, '[REDACTED]'
 14 '[REDACTED]'
 15 '[REDACTED]'
 16 A. Correct.
 17 Q. Do you see that?
 18 A. Yes.
 19 Q. And then if you look at subparagraphs A and B below,
 20 the ultimate total price that [REDACTED] would pay for an
 21 enterprise-wide license if it wanted to convert would be
 22 [REDACTED], right?
 23 A. One month after Chubb signed, yes.
 24 Q. And does it sound right to you that [REDACTED] had more
 25 than 50 billion dollars in revenue as of this time period?

1813**1815**

1 Q. And that covered deployment and development, right?
 2 A. Correct.
 3 Q. And since this is an enterprise-wide license, you would
 4 have signed off on it.
 5 A. I more than signed off it. I negotiated this one. I
 6 will never forget this contract.
 7 Q. Does it sound right, Mr. Waid, that [REDACTED] had [REDACTED]
 8 [REDACTED] as of the time you were
 9 negotiating this license?
 10 A. It's around there. It's a long time ago. I don't
 11 remember, but it's around there, I'll concede, [REDACTED].
 12 Q. So you will concede that [REDACTED] had about [REDACTED]
 13 [REDACTED], give or take, and FICO sold an
 14 enterprise-wide perpetual deployment and development
 15 license for [REDACTED]?
 16 A. In 2005.
 17 Q. Okay. Let's move on to 2007. I want to take a look at
 18 a Blaze license agreement that FICO entered with [REDACTED]
 19 and [REDACTED] is a large department store chain that we all
 20 know and love, right?
 21 A. Correct.
 22 Q. This is Exhibit D284.
 23 A. I'm there.
 24 Q. Okay. And if we turn to page 6, which is Exhibit B,
 25 you can see if we can blow up that chart, this states that

1 A. Wouldn't surprise me at all.
 2 Q. Let's look at Defendants' Exhibit 283, which is a
 3 contract with [REDACTED]
 4 Are you with me, Mr. Waid?
 5 A. 283, yes.
 6 Q. And if we could go to page 13, this is defining the
 7 scope and price of the original agreement with [REDACTED]
 8 right?
 9 A. In 2005, yes.
 10 Q. It was not an enterprise license. It was limited in
 11 scope, correct?
 12 A. Correct.
 13 Q. I want to take a look at the addendum to this contract,
 14 which we can find at page 34, and this chart, Mr. Waid,
 15 shows that the license as of March 29th, 2007, had been
 16 expanded to perpetual enterprise-wide, right?
 17 A. That is correct.
 18 Q. For both development and deployment, correct?
 19 A. Correct.
 20 Q. And the total price listed at the top right of this
 21 chart is \$[REDACTED] correct?
 22 A. Correct.
 23 Q. And then there was a credit to [REDACTED] for prior license
 24 fees that they had already paid.
 25 A. Correct.

1816**1818**

1 Q. And so the final net license fee for this perpetual
 2 enterprise-wide Blaze license was about [REDACTED]
 3 A. Correct.
 4 Q. Does it sound right to you that [REDACTED] revenue around
 5 this period of time was about 14 billion?
 6 A. It does not.
 7 Q. Okay. Let's look at in your binder next to you, I have
 8 a set of 10-Ks. Let's take a look at Defendants'
 9 Exhibit 309.
 10 A. Okay.
 11 Q. And if you go to page 9.
 12 A. Page 9. I'm there.
 13 Q. Does that refresh your recollection, Mr. Waid, about
 14 [REDACTED] --
 15 A. This is worldwide?
 16 Q. They had 14 billion dollars in worldwide revenue as of
 17 2006, correct?
 18 A. Yes, but this is U. S. grant.
 19 Q. What was the revenue for U. S.?
 20 A. I don't know.
 21 Q. Next I want to look at [REDACTED] This is Defendants'
 22 Exhibit 293, and [REDACTED] we all know it's a big national
 23 [REDACTED] chain, right?
 24 A. Colossal.
 25 Q. Colossal. And if we turn to page 17, we can see the

1 [REDACTED], correct?
 2 A. One second: Correct.
 3 MS. GODESKY: And defendants offer D276 into
 4 evidence.
 5 MR. HINDERAKER: Haven't gotten there yet, but
 6 subject to the same.
 7 THE COURT: Subject to the Court's order, D276 is
 8 received.
 9 BY MS. GODESKY:
 10 Q. And, Mr. Waid, if we look at page 15, we will see our
 11 summary chart of the Blaze license terms, and here we have
 12 an enterprise perpetual deployment and development license
 13 for [REDACTED] on the deployment side and a little over [REDACTED]
 14 on development, correct?
 15 A. Correct.
 16 Q. Okay. Now I want to take a look at Exhibit D343, and
 17 this is not yet in evidence.
 18 This is a February 27th, 2007, e-mail regarding a
 19 [REDACTED] Blaze ELA pricing proposal. Do you see that,
 20 Mr. Waid?
 21 A. I see that, yes.
 22 Q. And you are copied on this e-mail, correct.
 23 A. I am indeed.
 24 Q. The e-mail comes from a Ms. Karen Beale, and she is at
 25 FICO?

1817**1819**

1 summary of this license agreement, and the price for this
 2 Blaze license was [REDACTED], correct?
 3 A. It is [REDACTED], yes.
 4 Q. And that included unlimited development seats, correct?
 5 A. Correct.
 6 Q. And it was perpetual and enterprise-wide, correct?
 7 A. Correct.
 8 Q. And does it sound right that [REDACTED] had tens of billions
 9 of dollars of revenue around this time period?
 10 A. [REDACTED] did, yes.
 11 MS. GODESKY: And just for clarity of the record,
 12 Your Honor, defendants do offer D293, which is the [REDACTED]
 13 license agreement, and D283, the [REDACTED] agreement in
 14 evidence.
 15 MR. HINDERAKER: Subject to your Court's order,
 16 Your Honor.
 17 THE COURT: Subject to the Court's order, 283 and
 18 294 are received.
 19 MS. GODESKY: I will add 284 for [REDACTED]
 20 THE COURT: Same. 284 is received subject to the
 21 Court's limitation.
 22 MS. GODESKY: Thank you.
 23 BY MS. GODESKY:
 24 Q. And then if we could take a look at Defendants'
 25 Exhibit 276, which is a license agreement with [REDACTED] the

1 A. She was.
 2 Q. And it's sent to Mr. Vincent Gamba at [REDACTED],
 3 right?
 4 A. That's what it says.
 5 MS. GODESKY: Defendants offer D343.
 6 MR. HINDERAKER: No objection.
 7 THE COURT: D343 is received.
 8 BY MS. GODESKY:
 9 Q. Now, the first paragraph of this e-mail says, "FICO is
 10 extending an incentive proposal for a Blaze Advisor ELA at
 11 [REDACTED], to be executed March 26th,
 12 2007."
 13 Do you see that?
 14 A. Are you on the first page or second page? Where are
 15 you at?
 16 Q. I am in the first sentence?
 17 A. Correct.
 18 Q. And then if you turn to the second page, a little more
 19 than halfway down, there is this header, Incentive Proposal
 20 For Enterprise License, right?
 21 A. Correct.
 22 Q. And this was an enterprise license for the [REDACTED]
 23 [REDACTED] region?
 24 A. That's what it says.
 25 Q. And the proposed price was [REDACTED] dollars?

1820**1822**

1 A. And that's the proposed price, yes.
 2 Q. And that reflected a 6 [REDACTED]
 3 [REDACTED] right?
 4 A. That's what it says.
 5 Q. And you would have approved it because it's a big
 6 discount, right?
 7 A. I wouldn't have approved the [REDACTED]. Somebody else
 8 had to do that.
 9 Q. Might have been your boss?
 10 A. Probably.
 11 Q. Okay. And then let's look at another e-mail like this,
 12 which is Defendants' Exhibit D12. You're familiar with the
 13 company [REDACTED], Mr. Waid?
 14 A. Yes, I am.
 15 Q. It's a credit card company, right?
 16 A. They do more than that now, but yes.
 17 Q. And this is a March 1st, 2006, e-mail from David
 18 Burgess to [REDACTED], correct?
 19 A. David Burgess.
 20 Q. And David Burgess is a FICO employee?
 21 A. At this time, yes.
 22 Q. And he's e-mailing [REDACTED]?
 23 A. He is, yes.
 24 MS. GODESKY: Defendants offer Exhibit D12 into
 25 evidence.

1 A. I am, yes.
 2 Q. And we've seen that FICO regularly does business with
 3 very large companies?
 4 A. We do business with very large companies, yes.
 5 Q. You have access to all those contracts that FICO enters
 6 into for Blaze Advisor software, right?
 7 A. What do you mean "access"?
 8 Q. You have access to a lot of them at work, right?
 9 A. I'm not sure I understand the word "access." You mean
 10 can I get to them?
 11 Q. Sure.
 12 A. Yes, I can get to them.
 13 Q. We walked through a few of them, [REDACTED]
 14 [REDACTED] and other big companies, right?
 15 A. Yes.
 16 Q. We've seen the license fees and we've seen the 1.3
 17 million that was charged to Chubb in 2006, right?
 18 A. Correct.
 19 Q. And I get the sense that you're trying to suggest that
 20 pricing has changed since the mid 2000s when Chubb signed
 21 its Enterprise License Agreement, correct?
 22 A. No. I'm saying that discounting has changed.
 23 Q. Discounting has changed. So pricing is generally the
 24 same. It's just discounting has changed?
 25 A. Yeah. The models have shifted from perpetual to term

1821**1823**

1 MR. HINDERAKER: No objection.
 2 THE COURT: D12 is received.
 3 BY MS. GODESKY:
 4 Q. I want to take a look at what Mr. Burgess says. He
 5 says, "Our product management team has determined that the
 6 Blaze Advisor ELA value for [REDACTED] is a little over 9
 7 million dollars," right?
 8 A. [REDACTED]
 9 Q. [REDACTED]
 10 A. It says [REDACTED] here.
 11 Q. Thank you. [REDACTED] And then if you scroll down, there is
 12 a proposal for an ELA at [REDACTED].
 13 A. No, that's not correct. The proposal is for [REDACTED]
 14 [REDACTED]
 15 Q. [REDACTED]. That's the proposal.
 16 A. Correct. And then there is credits for what they have
 17 already paid, which brings the net due to [REDACTED]
 18 Q. Okay. So this is a proposal for [REDACTED] dollars
 19 for an enterprise license for [REDACTED]?
 20 A. In 2006, correct.
 21 Q. Okay.
 22 Now, we can take that down, Vanessa. Thank you.
 23 Mr. Waid, you are quite familiar with your more
 24 than 20 years of work at FICO with these contracts that the
 25 company enters into for Blaze, right?

1 annual, and we've moved away from ELAs. That's another
 2 change, but the actual model, no, not changed.
 3 Q. Okay. Vanessa, if we could pull up the slide deck that
 4 Mr. Waid used with Mr. Hinderaker and go to slide 29.
 5 So you walked through this calculation with
 6 Mr. Hinderaker of a hypothetical customer using Blaze in
 7 various computer applications, right?
 8 A. Correct. Yes.
 9 Q. And the total here is almost 50 million dollars, right?
 10 A. It is, yes.
 11 Q. And you have access to a lot of Blaze license
 12 agreements at FICO, but you haven't identified any license
 13 agreement with any customer anywhere where they paid 50
 14 million dollars to access Blaze, correct?
 15 A. You have to take into the account the years here as
 16 well. Let me do the math real quick. It's easier to do it
 17 on an annual basis, so it would be hard for me to answer
 18 that question.
 19 Annually I can answer it off the top of my head,
 20 but this is hard because it's duration.
 21 Q. When you walked through your direct examination with
 22 Mr. Hinderaker, you didn't show us any Blaze license
 23 agreements with other customers, right?
 24 A. No.
 25 Q. You just showed us the hypothetical calculation on page

1824**1826**

1 29, correct?

2 A. No. I showed you my standard pricing.

3 Q. Right --

4 A. This is my standard pricing.

5 Q. Your standard pricing on slide 29, 50 million dollars,

6 correct?

7 A. For these applications at this size with those number

8 of dev seats for those years, correct, that is standard

9 pricing.

10 Q. But you were not able to bring a single license

11 agreement to trial showing a single customer ever paying 50

12 million dollars to access Blaze, correct?

13 A. No.

14 Q. And you also didn't bring a single contract to trial

15 showing a customer ever paying 40 million dollars to access

16 Blaze, correct?

17 A. We did not bring -- the easy answer is no, we did not

18 bring anything to trial, yes. That's correct.

19 Q. And you don't have a contract you can show the jury

20 where a customer paid 20 million dollars to access Blaze,

21 right?

22 A. I don't know about that.

23 Q. But you haven't shown them, correct?

24 A. We have not, no.

25 Q. So let's talk about your standard pricing on slide 29.

1 Q. And that's because as we discussed earlier, generally

2 when a customer uses Blaze in more than three or four

3 applications, FICO's practice is to offer an

4 enterprise-wide license, correct?

5 A. That is correct.

6 Q. And this 49 million dollar number is not only based on

7 individual licenses for 17 different computer applications.

8 It also applies annual license fees to each application,

9 right? That's what you have done with your math.

10 A. That is correct, yes.

11 Q. So your calculation starts with a 3.9 million dollar

12 fee to use Blaze in a single, very large computer

13 application for five years, right?

14 A. For five years, correct. Yes.

15 Q. You don't have a contract where a customer ever agreed

16 to pay almost 4 million dollars to use Blaze for just five

17 years, correct?

18 A. Actually, I have one for four.

19 Q. You didn't bring that here, right?

20 A. It's not in the trial, no.

21 Q. And then your math goes on. Then it's a separate 2.4

22 million dollars to use Blaze in a large computer

23 application, but only for five years, right? That's the

24 math.

25 A. That's correct.

1825**1827**

1 Let's leave it up, Vanessa.

2 Your standard pricing hypothetical here on the

3 screen assumes that Blaze is in use in 17 applications,

4 correct?

5 A. This scenario? Correct, 17.

6 Q. But with your 20 years of experience at FICO, you

7 cannot identify a single company that ever entered into an

8 application based license for Blaze for even 15

9 applications, right? That's never happened.

10 A. That's not true.

11 Q. I want to look at your deposition testimony from April

12 2nd. And I'm looking at page 77.

13 Are you with me, Mr. Waid?

14 A. I'm there.

15 Q. You were asked at line 3, "Question: Now in section 11

16 of your declaration," and a declaration is a sworn

17 statement under penalty of perjury, right?

18 A. Yes. Correct.

19 Q. Okay. "In section 11 of your declaration, you,

20 Mr. Waid, say, 'To my knowledge, a FICO licensee has never

21 entered into a license agreement for the use of Blaze

22 Advisor software on an application basis with 15 separate

23 applications; is that accurate?"

24 And your answer, "Yes," correct?

25 A. At the time, yes.

1 Q. Then another 2.8 million dollar fee for another

2 separate computer application, only for five years, almost

3 3 million dollars, correct?

4 A. That's correct.

5 Q. And this math goes on and on, and that's how you get to

6 this 50 million dollar figure, correct?

7 A. That's our standard pricing, yes.

8 Q. Mr. Waid, almost all of these individual entries on

9 your chart on slide 29 are higher than the 1.2 million

10 dollars you suggested FICO charge for an enterprise-wide

11 perpetual license to use Blaze at Chubb, right?

12 A. I did not say that.

13 Q. We saw your e-mail correspondence with Mr. Haines,

14 right, where you were all talking about proposing a license

15 agreement to the Chubb Group of Insurance Companies,

16 correct?

17 A. The e-mail did not say that it was 1.6 million for the

18 enterprise group of Chubb.

19 Q. We all saw the e-mail conversations with you and

20 Mr. Haines and Mr. Layden and you're all talking about

21 enterprise-wide license for Chubb in the ball park of 1 to

22 2 million dollars. That was the price, right, not 50

23 million?

24 A. Which enterprise?

25 Q. These numbers all dwarf the enterprise-wide perpetual

1828

1830

1 licenses that we saw for [REDACTED] and [REDACTED] and [REDACTED] and what
 2 was offered to [REDACTED] and what was offered to
 3 [REDACTED], correct?
 4 A. **It does, yes.**
 5 Q. And all of these numbers dwarf the approximately 1
 6 million dollars that we know from Mr. Ghislanzoni that
 7 Chubb paid to access Red Hat Decision Management software
 8 in 2019 and 2020 for the Chubb enterprise, right?
 9 A. **I can testify to the fact that it's more than a**
 10 **million. I can't testify to the rest of your statement.**
 11 Q. And it's a lot more than a million dollars that Chubb
 12 paid for a replacement rules software license, right?
 13 A. **If that's what you paid, yes. It's a lot more money.**
 14 MS. GODESKY: Thank you, Mr. Waid. I have no
 15 more questions.
 16 THE COURT: Just letting Members of the Jury
 17 know, we'll go until about 12:30.
 18 MR. HINDERAKER: All right. Where to begin.
 19 REDIRECT EXAMINATION
 20 BY MR. HINDERAKER:
 21 Q. Mr. Waid, let's begin by, I gave you a binder, and in
 22 that binder is Defendants' Exhibit 172. Let's start there.
 23 A. **Okay.**
 24 Q. Thank you. Just trying to grab the date off of this.
 25 This is dated July 1, 19 -- 2019.

1 Q. So I didn't catch the total. When you add all the
 2 elements, it was what?
 3 A. **I'm doing it in my head. It's not the best, not the**
 4 **best way to do it, but it's about [REDACTED].**
 5 Q. For the five-year term.
 6 A. **That could be off.**
 7 Q. Got it. You were asked --
 8 Well, let me go to, let me go to the Exhibit 276,
 9 and I think this is one that you were asked about with
 10 [REDACTED]
 11 A. **Correct.**
 12 Q. And this, now this, this exhibit is November 11, 2010.
 13 A. **Correct.**
 14 Q. And you see that it is a, if you would give me the
 15 scope of use of this agreement, please. I was asking about
 16 the scope of use.
 17 A. **I'm sorry. Scope of use is enterprise.**
 18 Q. Thank you. Are you familiar with the negotiations and
 19 the pricing of this license with [REDACTED]
 20 A. **I am. Correction. It's enterprise deployment. There**
 21 **is three named seats for the development.**
 22 Q. So you were familiar with the pricing of this. You
 23 were part of the pricing of this license agreement?
 24 A. **I was, yes.**
 25 Q. Okay. When we are in this time frame of 2010, can you

1829

1831

1 A. **Correct.**
 2 Q. And let's talk about, this is, this is a term license.
 3 I'll give you a moment to orient yourself, myself, too.
 4 A. **It is a term license, yes.**
 5 Q. And for how many years?
 6 A. **Five years.**
 7 Q. And the scope of the use is for what?
 8 A. **It's for named application.**
 9 Q. For a named application?
 10 A. **Correct.**
 11 Q. One?
 12 A. **One.**
 13 Q. And what is the total fee that [REDACTED]
 14 [REDACTED]
 15 A. **The license was [REDACTED]. Total is [REDACTED].**
 16 Q. [REDACTED], one application for five years, correct?
 17 A. **Correct. That total doesn't total the full amount of**
 18 **the five years. There is actually another [REDACTED]**
 19 [REDACTED]
 20 [REDACTED]
 21 Q. 4.3 million.
 22 Your Honor, I offer the Exhibit D172.
 23 MS. GODESKY: No objection.
 24 THE COURT: D172 is received.
 25 BY MR. HINDERAKER:

1 tell us whether there was any discounting involved in this
 2 license agreement?
 3 A. **Just a [REDACTED], yes.**
 4 Q. How minor?
 5 A. [REDACTED].
 6 Q. Okay. And why was the [REDACTED] given in
 7 this context in 2010?
 8 A. **They probably pushed on the price a little bit, but we**
 9 **held pretty firm.**
 10 Q. Always losing my pen. I don't know where it is. There
 11 we go. All right.
 12 Let me, let me go to D293.
 13 A. **Yes. I'm here.**
 14 Q. And now, this is another one that you were asked
 15 questions about in 2008 now. What was the scope of this
 16 license with [REDACTED]
 17 A. **This was actually restricted to corporate, the**
 18 **corporate group of [REDACTED]**
 19 Q. So not all of [REDACTED]
 20 A. **Not all, just the corporate support function.**
 21 Q. Can you give any more background as to what that
 22 application was?
 23 A. **Yeah. They were, they were providing, like when you**
 24 **call in prescriptions and you want to get them fulfilled,**
 25 **sort of drug interactions and facilitating to make sure**

1832**1834**

1 your prescription is ready when you show up. It was sort
 2 of that automated process that they were using Blaze for.
 3 Q. Okay. And you were involved in the pricing of [REDACTED]
 4 A. Yes, I was. They are tough negotiators.
 5 Q. In your judgment, in your experience, is there anything
 6 inconsistent between the pricing for [REDACTED] given the scope of
 7 use of Blaze Advisor and the pricing models that we have
 8 been talking about in general in this lawsuit?
 9 A. None.
 10 Q. All consistent?
 11 A. All consistent.
 12 Q. And I want to go to, for -- if we go to Defendants'
 13 Exhibit 12 for a moment, please. It uses as an example
 14 [REDACTED] of 2006.
 15 A. March 2006, yes.
 16 Q. Right. And so, the ELA value you testified to on
 17 cross-examination was [REDACTED] ?
 18 A. At standard price, yes.
 19 Q. At standard price. And the proposal of [REDACTED]
 20 [REDACTED] was that a proposal with credit?
 21 A. No, that was not with credit. That was before credit.
 22 Q. Before credit.
 23 A. Mm-hmm (Yes).
 24 Q. So that's another [REDACTED] ?
 25 A. Correct.

1 the bottom talking about payments of the first one. Since
 2 these were so close, we might not have received all of the
 3 payment.
 4 Q. Isn't it, the credit --
 5 A. The --
 6 Q. The amount of fee paid for the original named
 7 application license was credited against the 350,000.
 8 A. It was, yes.
 9 Q. So the incremental amount to FICO is not 350,000. It's
 10 about 173,000.
 11 A. That sounds about right, yes.
 12 Q. And then when we go to the Amendment Number Two, and we
 13 see the pricing at 1,300,000, but the incremental, but the
 14 additional revenue to FICO wasn't 1,300,000?
 15 A. It was not.
 16 Q. Because why?
 17 A. Because we took 350,000 off of that, and it says right
 18 here that the net license fee, the additional amount of
 19 money paid at this time was 950,000.
 20 Q. So if we're talking about the incremental revenue to
 21 FICO for the Chubb & Son license, the Amendment Two brought
 22 in an incremental, an additional amount of revenue of
 23 950,000?
 24 A. That's correct.
 25 Q. Let's go to Plaintiff's Exhibit 111 and then to the

1833**1835**

1 Q. And in this context, if I could bring you to our own
 2 license agreement and perhaps that defendants' exhibit, do
 3 we have, do we have, whatever it is, D22, that same chart
 4 that was put up by the defendants.
 5 If not, we can do it without if it's not easy to
 6 get. How about putting up --
 7 Well, let's go to, let's go to our license
 8 agreement, Mr. Waid, the Chubb & Son license agreement.
 9 And I asked you, I asked you on my direct
 10 examination a rather general question about pricing, and
 11 Mr. Waid's testimony about pricing being after credit being
 12 incremental additional amount.
 13 A. Correct.
 14 Q. So I want to now in light of the cross, I want to go
 15 back and do that in a little more detail with respect to
 16 this license agreement that we have.
 17 So if we look at the pricing for the original
 18 license agreement, and I'll just do deployment pricing, the
 19 original license agreement was in deployment 173,750.
 20 A. Correct.
 21 Q. Okay. And then if we go to the Amendment One, and we
 22 see that the price there is \$350,000?
 23 A. Correct.
 24 Q. But was that \$350,000 additional to FICO?
 25 A. It was not. There is a little footnote down here at

1 second or third page. There we go.
 2 And you've explained to us who Sally Holt is in
 3 terms of her role, and this is a form document that you're
 4 familiar with from FICO or not?
 5 A. Yeah. We created it.
 6 Q. Okay. And when she is saying, and this is -- first
 7 let's put in the time context.
 8 This is before Amendment Two is signed.
 9 A. That is correct. The original create date was October
 10 12th.
 11 Q. And so she is looking at an expected value of 1.2
 12 million, correct?
 13 A. That's correct.
 14 Q. As you read that internally at FICO, is that an
 15 expected value of an additional 1.2 million of revenue to
 16 FICO?
 17 A. That is correct.
 18 Q. In contrast to the \$950,000 that was actually paid
 19 under the license agreement?
 20 A. That is correct.
 21 Q. You were asked about Defendants' Exhibit 4, if you
 22 could find that, please.
 23 Let's put this in the time frame of September 30,
 24 2015.
 25 A. No. September 30th, 2005.

1836**1838**

1 Q. That's what I wrote down, and I misspoke. 2005. You
 2 said you negotiated the deal, and you will never forget it.
 3 I would like you to explain the pricing that was a -- that
 4 was resulting in -- or resulted in this Exhibit 4.
 5 A. Yeah. The reason I will never forget this deal. We
 6 had been negotiating with them for some time. We were
 7 talking about at one time an [REDACTED], and
 8 the date of this is actually the last day of our fiscal
 9 year.
 10 And I got a phone call from my boss saying we
 11 need some business, where can we get it. I said, well, guy
 12 this guy has offered me [REDACTED]. I can take the
 13 deal if you want it. So I called him up about 3:00 or 3:30
 14 in the afternoon. And he said, okay, but you have to get
 15 it done before the football comes on, because I'm watching
 16 my football game.
 17 So I will never forget that.
 18 Q. Is this an anomaly?
 19 A. At this time I wish I could say it was an anomaly, but
 20 we used to grab business a lot back at this time in
 21 history. We switched to reoccurring revenue streams, and
 22 clients don't want to buy right now, they want to buy
 23 later, they buy later. So be it.
 24 Q. And let's look at Exhibit 284. What was the scope of
 25 use for 284 for Blaze Advisor?

1 quite different?
 2 A. Yes. Quite different.
 3 Q. You were shown the e-mails of Russ Schreiber and Mike
 4 Sawyer. Russ is commenting about what the license said or
 5 do not say about GWP.
 6 With respect to the license agreement in this
 7 case, in your mind, in your judgment, is there any concern
 8 about the reasonableness -- about FICO's reasonableness?
 9 A. None.
 10 Q. Is there any, is there any, is there any -- what's the
 11 right word -- any ambiguity in the change of circumstances
 12 in your mind from the status of the client at the time of
 13 2006 to the time --
 14 A. Not in my mind, no.
 15 Q. You were asked about the resolution of that consent or
 16 not consent within a 30-day period. You mentioned that it
 17 was not written into 10.8.
 18 A. That's correct. Yes.
 19 Q. Let's go back to J001, and can we go to paragraph 9
 20 point -- I'm sorry. Section paragraph 9.2, please, and
 21 then if we can focus in on 9.2A, Uncured Breach.
 22 Is that what you had in mind in terms of another
 23 provision of the contract detailing out a 30-day period?
 24 A. That's correct. Yes.
 25 Q. Now, you were asked about Exhibit 94, which is the

1837**1839**

1 A. In this contract, this one is for use solely with
 2 [REDACTED]
 3 Q. So not the whole of [REDACTED]
 4 A. This is, this is a group that figures out [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 Q. Okay. Let's go to Exhibit 77, D77, and you were asked
 9 some questions about what in this license agreement is
 10 10.7.
 11 And, Mr. Mayleben, could we show page 10 of this
 12 license agreement on the screen. And could you just put
 13 yellow on the 10.7 Assignment, Delegation.
 14 You mentioned that it was a long provision.
 15 Every license agreement is individually negotiated.
 16 A. They are, yes.
 17 Q. What does this Defendants' Exhibit 77 tell you about
 18 the extent of negotiations about paragraph 10.7 here?
 19 A. As my reaction showed, it's pretty long. I don't, I
 20 don't recall seeing something quite this long before.
 21 Obviously would have been involved in approving it, but,
 22 yes, it's pretty long.
 23 Q. Okay. And let's put up the license agreement between
 24 Chubb & Son and FICO and show paragraph 10.8.
 25 Is it fair to say the level of negotiation is

1 proposal from Ms. Pawloski of February 25.
 2 A. Correct.
 3 Q. 2016. And you were asked whether you had communication
 4 with her afterwards?
 5 A. Correct.
 6 Q. And did you?
 7 A. I did.
 8 Q. And what were they?
 9 A. Both written and verbal.
 10 Q. Let's just do the verbal. We want to stay within the
 11 time frame of -- around or in response to the February 25
 12 proposal.
 13 A. Yes. I [REDACTED] rather quickly, actually setting up a
 14 call, and set her through very specifically why this
 15 proposal was not acceptable to us and actually counter
 16 proposed with an equivalent approach, which was not, was
 17 not taken any further.
 18 Q. But you explained to her why, your thinking about her
 19 proposal?
 20 A. Correct.
 21 Q. Did they propose anything different at that moment?
 22 A. She did not.
 23 Q. At that time in February of 25 of 2016, did you have
 24 any additional information from Chubb & Son, other than
 25 what was contained in Mr. Hopp's letter earlier and what

1840**1842**

1 was contained in that proposal?

2 A. It's hard to hear you.

3 Q. My bad. Do you recall Mr. Hopp's letter to

4 Mr. Carretta which you just recently looked at, do you

5 recall -- you recall Tamra Pawloski's e-mail with a

6 potential proposal.

7 In terms of your involvement, did you have any

8 information about the intentions of the future use of Blaze

9 Advisor, other than what was in those communications and

10 the call you had with her?

11 A. Nothing.

12 Q. Okay. In the call you had with her, did she in any way

13 modify or change the approach that she presented in that

14 commercial proposal?

15 A. No.

16 Q. If we can go to Exhibit 91, please.

17 THE COURT: Mr. Hinderaker, we're at 12:30. How

18 much more do you have?

19 MR. HINDERAKER: I don't know. You know the Mark

20 Twain saying, if I had more time, I would have wrote a

21 shorter letter.

22 THE COURT: Right. All right. I think we should

23 take our lunch break.

24 Okay. Members of the Jury, we'll break for lunch

25 and be back in at, make it about 1:10. Give yourselves a

1 THE COURT: Well, as we discussed, we can argue

2 it after, after the close of business today. You need not

3 make a show in front of the jury of moving for the directed

4 verdict or the judgment. We understand that motion is

5 coming.

6 MS. GODESKY: So no need even to come up to

7 side-bar, right?

8 THE COURT: Correct.

9 MS. GODESKY: Okay. Okay. Thank you.

10 THE COURT: Thank you.

11 (Lunch recess taken.)

12

13 1:11 p.m.

14 IN OPEN COURT

15 (JURY PRESENT)

16 THE COURT: Be seated.

17 Mr. Hinderaker, you may proceed.

18 MR. HINDERAKER: Thank you.

19 BY MR. HINDERAKER:

20 Q. A few more questions. You were asked questions about

21 the discounting chart in the guidelines, and you mentioned

22 that it wasn't, the 2003 document was not updated because

23 the information is now in your sales force automation

24 system.

25 We don't know what that is. Could you tell us?

1841**1843**

1 little bit of time.

2 THE CLERK: All rise for the jury.

3 (Jury exits.)

4

5 (In open court without the Jury present.)

6 THE COURT: Go ahead and be seated if you want.

7 Just your best estimate at this point, Mr. Hinderaker.

8 MR. HINDERAKER: Half hour, 40 minutes.

9 THE COURT: Okay. And, Ms. Godesky, depends on

10 the redirect, but from what you can tell --

11 MS. GODESKY: Brief.

12 THE COURT: Brief, okay. And who at that point

13 will we begin with, do you know?

14 MS. GODESKY: Our first witness will be Kevin

15 Harkin.

16 THE COURT: Okay. Then I will address the

17 question regarding Mr. Harkin's use of the demonstratives.

18 I've had a chance to consider it over the time. I'm going

19 to allow him to use those.

20 MS. GODESKY: Thank you.

21 THE COURT: All right. We will see you at 1:10.

22 MS. GODESKY: And, Your Honor, sorry.

23 THE COURT: Yes.

24 MS. GODESKY: If we have a motion, how would you

25 like us to handle that?

1 A. Yes. So the first thing that we did was we actually

2 created Excel spreadsheets to do the quoting. I mentioned

3 that earlier. Originally, they went into a software

4 solution that we, we actually licensed from another third

5 party, which is, it's a Contact Management System,

6 essentially put in accounts, people that work at those

7 accounts or companies, and then you put in opportunities or

8 we call them sales opportunities.

9 So you create these entries in this system. And

10 it helps you manage, you know, when you called so and so

11 and what proposal you sent where, and you attach these

12 proposals to that registry in the sales force automation

13 tool. It's something to help the salespeople keep track of

14 where they're at in their discussions, what's coming next.

15 And it helps management understand what their

16 pipeline of opportunity looks like.

17 Q. And how is the discounting and pricing guidelines put

18 into that system?

19 A. Well, originally it was in actually just in the, in the

20 spreadsheets themselves. And then there's a routing

21 mechanism for the quote where there's a management chain.

22 And so the management chain has to check a box and say yes,

23 I've looked at that, and it's approved.

24 The same thing with contracts. They flow through

25 that same automation system. So when contracts are

1844**1846**

1 written, it flows through, and there's guidelines in there
 2 about what you can and cannot do.
 3 So right inside the sales force tool, you cannot
 4 actually enter a discount unless you have check mark
 5 management approval to do so at the discount level.
 6 Q. Thank you. And with staying on the theme of discounts,
 7 you were asked, you were asked about discounting at a
 8 40 percent level from your deposition. And your memory was
 9 that the question was in the 2006 time frame.
 10 I would like you to go back to -- I'd like you to
 11 go to the transcript of the January 16, 2019, deposition.
 12 And if we could put up Exhibit 226, please.
 13 Do you have it?
 14 A. I have it, yes.
 15 Q. Okay. And you have your transcript at page 133,
 16 January 16, 2019, transcript.
 17 A. So you don't want P226? You want the transcript?
 18 Q. Well, we're going to use both.
 19 A. Okay. Sorry. I'm sorry. Which one is it? 1 or 4.
 20 Q. January 16, 2019.
 21 A. And what page again?
 22 Q. 133.
 23 A. And I'm there.
 24 Q. Okay. If you see at the middle of the page at lines
 25 14, the question is, "If we can then go to Exhibit 226, if

1 Q. Okay. And over the course of your years, have other
 2 clients negotiated limitations into FICO's protections of
 3 no assignment?
 4 A. They have.
 5 Q. And the level of negotiations to limit FICO's
 6 protection of the no assignment provision, I assume various
 7 varies from client to client?
 8 A. It varies quite significantly, yes.
 9 Q. Do you have some clients that don't change FICO
 10 language at all?
 11 A. We have a lot of them who do not change FICO language.
 12 Q. So the protections that FICO enjoys from its own
 13 version of paragraph 10.8 survives into the written, into
 14 the written license agreement?
 15 A. That's correct.
 16 Q. Okay. And you've looked at paragraph 10.8 for the
 17 Chubb & Son license with FICO?
 18 A. I have.
 19 Q. Was there any degree to which they sought to limit
 20 FICO's rights under paragraph 10.8?
 21 A. The only edit that they added was the "may not be
 22 unreasonably withheld."
 23 Q. And to that extent in your understanding,
 24 paragraph 10.8 of the license agreement in this case has
 25 all of FICO's standard protections?

1845**1847**

1 we can then go to 226." Do you see where I'm reading?
 2 A. Yes.
 3 Q. And on the screen, if we can blow up at the bottom, the
 4 Plaintiff's Exhibit 226 is also as you see the Deposition
 5 Exhibit 226.
 6 A. Yes.
 7 Q. And the date of that, and the date of that email is
 8 what, June 16, 2006?
 9 A. Correct.
 10 Q. And the question and answer that you were then
 11 presented with, continuing on page 133 and going to around
 12 line 19 or 18 or 19 on 134, was that all in the context of
 13 this email and 2006 pricing?
 14 A. It was.
 15 Q. And now I'd like to go back to Exhibit 77, please,
 16 Defendants' 77.
 17 Thank you.
 18 And I'd like to go to the provision at
 19 paragraph 10.7 that we looked at before. And if we can
 20 just bring that up. Thank you.
 21 Now I've already asked you this, so it's just to
 22 put in context. This is an example of client negotiating
 23 provisions of paragraph -- the no assignment provisions of
 24 a FICO license agreement.
 25 A. It is.

1 A. Correct.
 2 MR. HINDERAKER: No further questions. Thank
 3 you.
 4 MS. GODESKY: Nothing further from me, Your
 5 Honor.
 6 THE COURT: All right. Thank you, Ms. Godesky.
 7 Mr. Waid, you may step down thank you.
 8 THE WITNESS: Judge?
 9 MR. HINDERAKER: Your Honor, the plaintiff rests.
 10 THE COURT: Very well.
 11 MR. HINDERAKER: It's case in chief.
 12 THE COURT: Thank you, Mr. Hinderaker.
 13 So the plaintiff just rested their case in chief.
 14 We will commence with the defendants' case in chief in just
 15 a second.
 16 I'm going to give you one evidentiary
 17 instruction, just so that you have some context for what
 18 you've heard and what you are going to hear. I will or may
 19 have other evidentiary instructions at the close of the
 20 trial.
 21 You have heard testimony from Ms. Jandeen Boone,
 22 the FICO lawyer who participated in drafting the 2006
 23 software licensing agreement, and from Mr. Thomas Carretta,
 24 the FICO lawyer who issued the notice of breach of the
 25 license agreement. You will or may hear testimony from

2137**2139**

1 can be added fairly quickly, two weeks. Can be leveraged
 2 across projects.
 3 That's what's said in this document.
 4 A. Yeah, the model that Chubb built.
 5 Q. Agreed. The model that Chubb built inside of Blaze
 6 Advisor that it licensed from FICO.
 7 A. Agreed.
 8 Q. Agreed.
 9 Let's go to Exhibit 518 again, Plaintiff's 518.
 10 And if we could just, if we can increase that column which
 11 is Business Rules Capability.
 12 So according to Chubb & Son, the Blaze rules
 13 capability for DecisionPoint was rate tables and pricing
 14 calculations, eligibility determinations, endorsement
 15 generation, and data normalization.
 16 Agreed?
 17 A. That's what it says, yes.
 18 Q. And off the top of my, top of the screen, I am not
 19 seeing Profitability Indicator detailed out on this one, so
 20 we'll move on.
 21 We can take that down and let me change slides.
 22 Do we agree that policy administration systems
 23 are core systems of an insurance company?
 24 A. They are.
 25 Q. And do we agree that the meaning of a core system is a

1 system.
 2 Q. It executed against those rules.
 3 A. It did.
 4 Q. Yes. I think we're trying to say the same thing.
 5 A. No, we're not.
 6 Q. Well, we'll see.
 7 A. Okay.
 8 Q. The underwriting rules for acceptance or rejection of a
 9 risk come from Chubb.
 10 A. Correct.
 11 Q. It is the company that's deciding what its own business
 12 logic is. And that is written into Blaze Advisor for CSI
 13 Express.
 14 A. Yes.
 15 Q. Agree with me so far?
 16 A. Yes.
 17 Q. And when an insurance application is received, CSI
 18 Express, using Blaze Advisor, compares the risk to the
 19 rules of Chubb and executes a decision accordingly.
 20 Agreed?
 21 A. I agree with what you are saying.
 22 Q. Thank you.
 23 And indeed when a policy is accepted in CSI
 24 Express, there are a lot of business rules that are fired
 25 or retrieved in the process to bind and book the policy to

2138**2140**

1 system that's a primary one that supports the insurance
 2 operations?
 3 A. It supports the insurance operation, yes.
 4 Q. Okay. And you understood in your review that Blaze
 5 Advisor in CSI Express, as one of the policy administration
 6 systems, supported the underlying process for CSI Express?
 7 A. I don't understand your question.
 8 Q. Blaze Advisor supports the -- Blaze Advisor supports
 9 the underlying process of CSI Express. Yes or no?
 10 A. What underlying process? I don't --
 11 Q. Oh, I understand the confusion. The process of being a
 12 business administration system.
 13 A. It does not do business administration or policy
 14 administration. Blaze does not.
 15 Q. Understood. Let me go back to 518. I can get a better
 16 question.
 17 If we look at 518 and look at CSI Express, Blaze
 18 Advisor supported the underwriting guidance in the CSI
 19 Express policy administration system application.
 20 A. It provided Chubb's rules for underwriting guidance,
 21 yes.
 22 Q. Agreed. It provided the rules that came from Chubb
 23 that it chose to put into Blaze Advisor.
 24 A. Yeah, just to be clear. It didn't do the guidance. It
 25 provided the guidance rules that Chubb had loaded into the

1 decide whether it should be, whether to decide whether to
 2 renew, and the various functions of the policy
 3 administration system, because you said all those things.
 4 A. All those functionalities were built by Chubb to call
 5 out to various rules engines, Duck Creek, Blaze, and
 6 homegrown rules.
 7 Q. Yes. And Blaze was one of the components that was
 8 executing rules that were put into its software in
 9 accordance with the business logic of Chubb & Son.
 10 A. Yes.
 11 Q. In your -- you did some looking at what CUW was.
 12 A. Yes.
 13 Q. In your view, CUW was also a core system?
 14 A. It was part of the CSI Express is the way it was
 15 initially presented to me.
 16 Q. Okay.
 17 A. And so, yes, it was part of that core policy
 18 administration system.
 19 Q. And we can be -- we can agree, I think, that while it's
 20 called out as a separate application, CUW-IM, there is an
 21 interfunctionality, if I can use that word, with CUW and
 22 CSI Express.
 23 A. The two are integrated.
 24 Q. Better word. The two are integrated. We will use
 25 that.

2141**2143**

1 A. Yeah.

2 Q. And CIS Claims is another core system and one of the --

3 agreed?

4 A. CIS Claims, as I understand it, is really mislabeled.

5 It's not a claims system.

6 Q. Yes. You've heard the testimony that it's a, feeds

7 into the actuarial process.

8 A. It's basically a function of the policy administration

9 system to feed data into a repository for claims for

10 analysis.

11 Q. I think we both heard the same testimony in that

12 regard.

13 A. Okay.

14 Q. I understand the confusion given its title.

15 A. So I wouldn't call that a core system, no. It's a

16 business intelligence capability.

17 Q. Okay.

18 A. I mean, it provides data to the actuary to --

19 Q. Well, if we go back to your deposition then. I guess

20 I'm confused. If you go to line 11, please, or page 11.

21 A. Of the deposition?

22 Q. Yes, please. And I'm going to start on line 14, when

23 you get a chance to get there.

24 A. Line?

25 Q. 14?

1 A. Okay.

2 Q. I'm not contending otherwise.

3 A. Okay.

4 Q. Yeah. If we were to speak to the Blaze Advisor role in

5 DecisionPoint, you would agree that Blaze Advisor can serve

6 up a rule quickly?

7 A. Some rules, yes.

8 Q. I'm speaking, yeah, I'm speaking of the rules in

9 DecisionPoint at this point.

10 A. DecisionPoint, there's multiple parts of DecisionPoint,

11 right?

12 Q. So do we agree -- well, let's put up the 518 again

13 then.

14 So do we agree that for DecisionPoint the Blaze

15 Advisor capability includes rate tables and pricing

16 calculations, eligibility determination, endorsement

17 generation and data normalization?

18 A. Yes.

19 Q. Okay. We can put that down.

20 Let's turn to automated renewal.

21 Do we agree that for insurance companies

22 retaining their customers is important?

23 A. Absolutely.

24 Q. And so we agree that the more customers that renew

25 their policies, the better.

2142**2144**

1 A. 14.

2 Q. The question -- are you there with me now?

3 A. Yep.

4 Q. Okay. The question says, "What does the word 'core'

5 mean?

6 "Answer: It's the primary system that supports

7 the insurance operations.

8 "Question: In the case of Federal can you give

9 me an example of that? What would be a core system?

10 "Answer: Sure. CSI suppress would be one.

11 "Question: Any others come to mind?

12 "Answer: CUW, TAPS, CIS Claims."

13 Did I read that right?

14 A. Yes. At the time of this deposition, I still

15 understood that to be the claims system.

16 Q. Okay. Your understanding changed.

17 A. It changed after that.

18 Q. All right. Good. So whether --

19 Let me put it this way. Rather than debate the

20 use of the word "core," CSI Express is a core system.

21 Agreed? Right? And we agree that CIS Claims, your word,

22 I'm going to use your word "integrated," integrates into

23 CSI Express.

24 A. Yes. But to be clear it's not the claims system.

25 Q. No. We -- yeah, absolutely.

1 A. Yes.

2 Q. Do we also agree that being able to renew policies

3 without human intervention or human touch results in more

4 renewals?

5 A. Not necessarily.

6 Q. Do you think there is a business benefit to automatic

7 renewals?

8 A. Yes.

9 Q. What is that business benefit?

10 A. Less touch by humans.

11 Q. And do you also agree -- well, do you agree that while

12 in any individual case it may or may not make a difference

13 that over the aggregate if you can automate renewals you

14 are going to increase the percentage of renewals overall?

15 A. I don't agree with that.

16 Q. Do you have any data that suggests otherwise?

17 A. I don't have the rules that were actually being used to

18 determine whether it was one that would, a customer would

19 actually renew. I mean, at the end of the day, renewals

20 aren't something that just automatically happens. The

21 customer has to say he wants to renew the policy.

22 Q. Well, I agree. Of course that's right.

23 A. So if they don't renew the policy, whether it made it

24 all the way through the process to the end and he didn't

25 renew or she didn't renew.

2145**2147**

1 Q. I think your answer is highlighting the, an example of
 2 an individual customer. Agreed?
 3 A. Yeah.
 4 Q. My question was directed to, let's call it a hundred
 5 customers or a thousand customers. If you can
 6 automatically issue renewal policies to a thousand existing
 7 customers rather than do it individually, are you going to
 8 increase your rate of renewals from your experience in the
 9 industry?
 10 A. Yes.
 11 Q. Do we agree that -- let me turn to, we did some of the
 12 applications. I want to sort of speak about Blaze Advisor
 13 more generally now and some of the business benefits from
 14 Blaze Advisor.
 15 Do we agree that Blaze Advisor was implemented
 16 into applications to enhance precision, agility, quality
 17 and all the efficiencies that you get out of externalizing
 18 rules and managing rules?
 19 A. That's the stated benefits from FICO's document, yes.
 20 Q. And do you think that Blaze Advisor does not produce or
 21 achieve those benefits?
 22 A. I don't, I don't have the evidence for what they used
 23 it for. It wasn't clear to me that it had achieved those
 24 benefits.
 25 Q. So on page 91 --

1 justification for multiple instances of precision and
 2 agility and quality and all of the efficiencies that you
 3 get out of externalizing rules and managing rules and so
 4 forth.
 5 "Question: Precision, consistency, agility,
 6 speed, time and costs?
 7 "Answer: Yes."
 8 A. Mm-hmm, correct.
 9 Q. I read that correctly.
 10 A. You did.
 11 Q. And with respect to your analysis, do you agree that
 12 Blaze Advisor can achieve those outcomes?
 13 A. I don't know if it can or it can't, but that's the
 14 stated goal of the technology.
 15 Q. Good. Yes, I agree. And then let's go to page 92,
 16 just up, starting at line 4:
 17 "Question" -- are you with me now?
 18 A. Yep:
 19 Q. "Question: Generally speaking, they are efficiencies,
 20 do you, do you dispute that Blaze Advisor can achieve those
 21 five as you call them efficiencies?
 22 "Answer: No, I don't dispute that."
 23 Agreed?
 24 A. Yes.
 25 Q. Changing topics a little bit. Do we agree that if you

2146**2148**

1 A. Of?
 2 Q. Your deposition, please.
 3 A. Okay.
 4 Q. And I'm starting at line 3.
 5 A. On 91?
 6 Q. No. No. 91.
 7 A. 90. Mr. Folz? Is that the line?
 8 Q. No. The -- at your deposition, page 91.
 9 A. Oh, 91.
 10 Q. Yeah, nine one.
 11 A. You said 90.
 12 Q. 91.
 13 A. And after -- does it start with, "And after that"?
 14 Q. Yeah. And then, so question -- yes, it does.
 15 "And after that 2006 initial engagement, Federal?
 16 Then expanded their use of Blaze into other applications;
 17 isn't that right?
 18 "Answer: That's correct."
 19 A. "That's correct."
 20 Q. "Question: And did you speak with any other
 21 individuals or review any other documents about the
 22 business justifications for implementation in Blaze into
 23 those other applications?
 24 "Answer: There were a number of documents I
 25 recall reviewing that basically repeated the same

1 have the organization's top expert develop the rules that
 2 are then loaded into, put into Blaze Advisor, used to drive
 3 decisions, you will get better risk decisions and -- well,
 4 you will get better decisions overall?
 5 A. Not necessarily.
 6 Q. If you have the top expert developing the rules that
 7 then drive the decisions, you don't think you will get
 8 better decisions?
 9 A. The application, as I understand it, allow the under
 10 writer to override what the system will say. So wouldn't
 11 necessarily get the result that Chubb was looking for, but
 12 got a different result that may still be okay.
 13 Q. Okay. But it would be the consequence of another
 14 underwriter overriding?
 15 A. Overriding what the system was saying you should think
 16 about doing it this way. It's guidance. It's
 17 underwriting -- that's why they call it underwriting
 18 guidance, not underwriting absolutes.
 19 Q. All right. So the system and the guidance would be
 20 able to produce a better decision, but an individual human
 21 underwriter could override that and change the results?
 22 A. You don't know if it was that that underwriter knew
 23 something better than the one that wrote the rule about
 24 that particular rule. So they could have put a different
 25 rule in that said do it this way and found out they had

2396**2398**

1 11:30 p.m. on the night before Mr. Waid was to continue his
 2 testimony. So we got it while he was sequestered and got
 3 them at 11:30 at night. These were given to the defendants
 4 a few days ago, in fact, although we could anticipate
 5 Mr. Folz testifying, it was before we were officially
 6 noticed that he would.

7 THE COURT: Understood. Thank you, Counsel.
 8 Everybody else ready to proceed?

9 MS. GODESKY: Yes.

10 THE COURT: Okay. And one last second before you
 11 bring them in. Give me your current estimate how long with
 12 Mr. Folz.

13 MS. GODESKY: 45 minutes to an hour for direct.

14 THE COURT: Okay. And then are you still about
 15 45 minutes with Zoltowski?

16 MS. KLIEBENSTEIN: I hope I am well under 30.

17 THE COURT: Okay. Good.

18 THE CLERK: All rise for the jury.
 19 (Jury enters.)
 20
 21 (In open court with the Jury present.)
 22 THE COURT: Be seated.
 23 Good morning, Members of the Jury. As I had
 24 indicated yesterday, this will be the last day of
 25 testimony. I'm hopeful that we will conclude that

1 Q. And what years were those?
 2 A. 1990 up until March 2018. So January of 1990 through
 3 March -- March 1st, '18.
 4 Q. Is Chubb paying you by the hour to be here today?
 5 A. No.
 6 Q. Why are you here?
 7 A. I heard about this case, and I was the individual who
 8 actually negotiated the deal on behalf of Chubb and thought
 9 my perspective would be important to hear on the case,
 10 so --
 11 Q. What was your title at Chubb at the time of your
 12 retirement?
 13 A. I was the Chief Information Officer for the commercial
 14 lines division.
 15 Q. And when we talk about commercial lines insurance, what
 16 kind of insurance are we talking about?
 17 A. So it's really insurance that is sold to businesses.
 18 So it could be workers' comp. It could be commercial auto.
 19 We had marine products, more general property casualty,
 20 liability products, access umbrella. So a whole host of
 21 products.
 22 Q. What were your general responsibilities as the chief
 23 information officer or CIO?
 24 A. So I ran or I managed the technology aspect of the
 25 commercial lines division, which meant that any technology

2397**2399**

1 testimony before the lunch break, and then I can send you
 2 on your way. And then first thing in the morning tomorrow,
 3 we will have instructions, final argument, and you will
 4 begin your deliberations then. Okay?

5 All right. Ms. Godesky, call your witness.

6 MS. GODESKY: Your Honor, defendants call Phil
 7 Folz.

8 THE COURT: Mr. Folz, come on up here, please.
 9 If you will raise your right hand.

10 (Witness sworn.)

11 THE WITNESS: I do.

12 THE COURT: Go ahead and sit down. Turn your
 13 microphone on, and speak into it, and state your full name
 14 for the record.

15 THE WITNESS: My name is Phillip Folz.
 16 (PHILIP FOLZ)
 17 DIRECT EXAMINATION

18 BY MS. GODESKY:
 19 Q. Good morning, Mr. Folz. Are you currently retired from
 20 Chubb?
 21 A. Yes, I am.
 22 Q. When did you retire?
 23 A. March 1st, 2018.
 24 Q. For how many years did you work for Chubb?
 25 A. 28 years.

1 that commercial lines needed to support their business we
 2 provided. Okay? In that more specifically, though, in
 3 that role for the two years that I was in it, my primary
 4 responsibilities were integrating the two organizations.
 5 So Chubb was acquired by ACE, and we were integrating the
 6 two organizations to become one.
 7 Q. Were you managing a budget as the CIO?
 8 A. Yes.
 9 Q. How big a budget were you responsible for managing in
 10 that role?
 11 A. It was approximately 100 million dollars.
 12 Q. Now, the jury has heard from architects who work at
 13 Chubb. How is the role of an information officer different
 14 from the role of an architect?
 15 A. Yeah. So a chief information officer actually uses
 16 input from architects and others in order to come up with
 17 the technology strategies in order to support the business.
 18 So the architects give you the technical aspects of what
 19 we're trying to do and architect it. You get input from
 20 other areas, you apply a cost element to it, and you come
 21 up with a strategy as to how you're best going to support
 22 the business goals of the underlying business that you
 23 support.
 24 Q. Now I want to take you further back in time to 2006.
 25 What was your position at Chubb as of 2006?

2400**2402**

1 A. 2006 I was the IT controller for the core IT division
 2 within Chubb. And the core IT division was a set of
 3 departments that provided a set of shared services and
 4 technologies across all of Chubb.
 5 Q. In the context of your work as a controller, what does
 6 the term "cost allocation" mean?
 7 A. So when we spend money on products being in a
 8 centralized area, I needed to then allocate those costs out
 9 to the areas that were benefiting from the use of those
 10 products. It's cost allocation.
 11 Q. And so cost allocation was part of your
 12 responsibilities as the controller?
 13 A. Yes, it was.
 14 Q. Mr. Folz, did you provide deposition testimony in this
 15 case where you walked in a conference room and provided
 16 testimony under oath?
 17 A. Yes, I did.
 18 Q. You provided live deposition testimony?
 19 A. Oh, no, not deposition. It was a legal statement.
 20 Q. Okay. Legal statement. So did you provide a sworn
 21 written statement at one point in this case?
 22 A. Yes, I did.
 23 Q. And did you review that statement before you testified
 24 here today?
 25 A. Yes, I did.

1 A. Yes.
 2 Q. Okay. Returning to your work at Chubb in this 2006
 3 time period, to whom were you reporting?
 4 A. June Drewry, who was the global chief information
 5 officer.
 6 Q. And during your nearly 30 years at Chubb, Mr. Folz,
 7 approximately how many software license agreements and
 8 renewals were you involved in?
 9 A. Probably a couple hundred.
 10 Q. Did there come a time in 2006 when you became involved
 11 in negotiations with FICO for a license for Blaze?
 12 A. Yes.
 13 Q. And can you describe the circumstances that led to your
 14 involvement?
 15 A. So at Chubb we already had FICO. We were already using
 16 FICO within one of our divisions at Chubb, our specialty
 17 lines division. We had an interest in taking that rules
 18 engine capability and extending it to other areas, both
 19 within the United States and globally.
 20 So my role was to work with FICO and our vendor
 21 management and legal folks to try to come up with the best
 22 deal possible to acquire what's called an enterprise
 23 license that would extend the rights and usage of that
 24 software globally.
 25 Q. You talked about an enterprise license. In the context

2401**2403**

1 Q. Is there anything in that statement you wanted to
 2 correct?
 3 A. Yeah. I mean, there were two things at the beginning
 4 of that particular statement.
 5 One was that I worked for Federal Insurance
 6 Company for those 28 years. That is partially true. That
 7 was up until about 2016. I was a Federal Insurance Company
 8 employee. When we were acquired by ACE and became Chubb
 9 Limited, that Federal Insurance went away. So I can't tell
 10 you who I was an employee of, but it wasn't Federal
 11 Insurance. So for those couple of years it changed.
 12 The other one is, there is mention in the, in the
 13 legal statement that I was the controller for North
 14 America. And at the time when I was giving that legal
 15 statement, silly on my part, I thought North America meant
 16 only the United States. Okay? So I clarify that with, I
 17 was a controller for a centralized group that provided
 18 services worldwide, but my budget responsibilities were
 19 North America -- excuse me -- were the United States, not
 20 Canada or Mexico.
 21 Q. So when you said in your sworn written statement that
 22 you were the controller for North America, that was a
 23 mistake?
 24 A. That was a mistake.
 25 Q. Okay. And you meant just to refer to the U. S.?

1 of your work at Chubb, was the term "enterprise"
 2 interchangeable with "global" or did those two things mean
 3 something different?
 4 A. That's a good question. So "enterprise," "global" and
 5 "worldwide" all mean the same thing at Chubb. So if we
 6 said, We want a worldwide deal, right, it means we want a
 7 worldwide deal, global, enterprise, all the same thing.
 8 Q. What was your understanding of why Ms. Drewry, your
 9 boss at the time, wanted to explore turning the Blaze
 10 license into an enterprise or global deal?
 11 A. So one of June's strategies was to standardize certain
 12 functionality across zones so that we could better leverage
 13 capability -- we could better leverage human resources and
 14 leverage costs.
 15 Q. At the time Ms. Drewry asked you to get involved in the
 16 negotiations with FICO, you understood that Chubb already
 17 had a license with FICO, right?
 18 A. Yes.
 19 Q. And what was your understanding of the scope of that
 20 already-existing license?
 21 A. So the existing license was for one strategic business
 22 unit. That strategic business unit was our specialty group
 23 in the United States.
 24 Q. What do you recall doing when you were first asked by
 25 Ms. Drewry to get involved in this?

2404**2406**

1 A. So the first thing I would do is contact our vendor
2 management group, let them know that we have an interest in
3 opening up a negotiation or at least a discussion with FICO
4 on the possibility of doing an enterprise deal.

5 Next, I would have called Mark Berthiaume, who
6 was the senior IT manager within the Chubb specialty unit,
7 the area that already had the license, and, you know, kind
8 of discuss the license agreement that we already had with
9 him.

10 And then, finally, we would reach out to FICO,
11 and I believe it was Larry Wachs that we spoke to, and open
12 up negotiations.

13 Q. Were you personally involved in those communications
14 with FICO?

15 A. Yes, I was.

16 Q. You mentioned Larry Wachs at FICO. Was there anyone
17 else at Chubb that was involved?

18 A. Yes. So Jim Black from vendor management was involved
19 with me.

20 Q. And what's your recollection about the general process
21 of those negotiations? Was it phone calls, e-mails,
22 letters? Tell us about that.

23 A. Mostly phone calls and a couple of e-mails, as I
24 recall.

25 Q. When you set out to determine whether the Blaze license

1 Q. You talked about these other IT areas. Did that
2 include Chubb Australia, Canada and Europe?

3 A. Yes. Yes, it did.

4 Q. Now, at this point in time in 2006, you had been at
5 Chubb for more than 15 years, correct?

6 A. Yes.

7 Q. As of that time period, what was the highest dollar
8 value of a software license you had been involved in
9 negotiating?

10 A. Personally? Four or five million dollars, yeah.

11 Q. What were the circumstances of that type of license
12 fee?

13 A. So it was a complete suite of IBM products that did
14 much more than the rules engine.

15 Q. So from the perspective of an IT controller at Chubb,
16 was a suite of IBM products comparable to the Blaze
17 software in terms of functionality?

18 A. No, no. Much broader.

19 Q. From the perspective of a controller who negotiated
20 hundreds of agreements for Chubb, what would your reaction
21 have been to a proposal that Chubb pay 50 million dollars
22 to access Blaze to use for a period of ten years in 17
23 applications?

24 A. I think that's ridiculous.

25 Q. Okay. I want to take a look at the back and forth

2405**2407**

1 could be expanded to enterprise-wide, did you have a budget
2 or a high-end dollar amount in mind for what Chubb would be
3 willing to pay?

4 A. Yes, I did.

5 Q. And what was that?

6 A. It was approximately two million dollars was my upper,
7 upper end.

8 Q. And how did you come up with that number?

9 A. So I took a look at what we had spent so far for what
10 we had bought. And I also, to be quite honest with you, I
11 had -- that's what I kind of had left over in the budget to
12 spend. So if it was going to be five million dollars, it
13 was a nonstarter.

14 Q. And once you had that two million high end target in
15 mind, what, if any, plan did you have for how to allocate
16 those costs across the organization if you were able to
17 close the deal?

18 A. Mm-hmm. So prior to the, prior to negotiating the
19 deal, we did reach out to all of the areas within IT to
20 gauge interest in using this particular piece of software,
21 you know, within their applications. And as we did that,
22 it was with the understanding that if we were to come to a
23 deal, I would then allocate expenses to them in future
24 years for like the maintenance aspects of the license
25 agreement.

1 between Chubb and FICO over the license agreement. And if
2 we could pull up on the screen P112, which is already in
3 evidence.

4 A. Is this water?

5 Q. Yes. You can use the water.

6 Mr. Folz, do you recognize this e-mail exchange?

7 A. Yes, I do. Yes, I do.

8 Q. And this is from December 12th, 2006, right?

9 A. Yes, it is.

10 Q. Okay. And if you look at this first page, the second
11 e-mail down, there is a message from Mr. Wachs. Do you see
12 that?

13 A. Yes.

14 Q. And it says, "Jim, see our responses to the questions
15 raised by Phil. They are noted in blue text. Should you
16 need further clarification or wish to discuss these
17 further, please don't hesitate to call," right?

18 A. Yes.

19 Q. And the "Jim" is Mr. Black at Chubb?

20 A. Yes, it is.

21 Q. Do you have an understanding why Mr. Wachs is referring
22 in this e-mail to questions raised by Phil?

23 A. Yes.

24 Q. What's your understanding?

25 A. I asked these questions. So this was later in the

2408**2410**

1 deal. So this was in December, early December. I asked
 2 these questions of Jim to relay to Mr. Wachs.
 3 Q. And did Mr. Black then relay FICO's responses to you at
 4 some point?
 5 A. Yes, he did.
 6 Q. Okay. I want to focus on the second question that you
 7 asked Mr. Black to pass along to FICO.
 8 And that's about a third of the way down the
 9 second page, Vanessa, if we could flip to the second page.
 10 And if you look at number 2 in that list of
 11 questions, we can blow that up. Thank you.
 12 It says, "For options 1 and 2 are there any
 13 restriction in using or redistributing the licenses across
 14 SBUs or other IT areas. Said another way, do we get
 15 licensing rights to 30 and 45 licenses respectively to
 16 distribute as we see fit anywhere at Chubb?"
 17 Do you see that?
 18 A. Yes.
 19 Q. When you used the word "Chubb" there, did you intend to
 20 refer to Chubb & Son or the Chubb Group?
 21 A. The Chubb Group.
 22 Q. What does SBU mean?
 23 A. Strategic business unit.
 24 Q. And why did you have this question for FICO?
 25 A. So, again, the context of the deal was to use it

1 MS. GODESKY: Thank you.
 2 BY MS. GODESKY:
 3 Q. Mr. Folz, do you recognize the e-mail on this document?
 4 A. Yes.
 5 Q. And what's happening here?
 6 A. So that's an e-mail that I drafted to our leadership
 7 team. And I'm just, more or less, informing them what the
 8 major components of the deal was and that it would be
 9 discussed at our next senior management meeting for, you
 10 know, approval.
 11 Q. What's the date on this document?
 12 A. My e-mail was 12/15/2006.
 13 Q. And in the first sentence you wrote, "Today, Julia, Jim
 14 Black and I had a conference call with the folks from Fair
 15 Isaac and received their best and final pricing offer for
 16 an enterprise deal." Do you see that?
 17 A. Yes.
 18 Q. To what enterprise were you referring when you said
 19 "enterprise deal"?
 20 A. The Chubb Group of Insurance Companies.
 21 Q. Did your reference to an enterprise deal in this
 22 message include Chubb Canada, Australia and Europe, or were
 23 you excluding them?
 24 A. I was including them.
 25 Q. What, if any, conversations have you had with the folks

2409**2411**

1 globally. And what we wanted to do was we wanted to be
 2 able to distribute the software globally without
 3 restrictions on the number of seats. So if there was an
 4 interest in more of our applications, wanting to use the
 5 software, we wanted to be able to do that.
 6 Q. Can you read FICO's response which is embedded
 7 underneath the question?
 8 A. Yes. "There are no usage or redistribution
 9 restrictions within Chubb in any of the options within the
 10 seat limitations of options 1 and 2."
 11 Q. And what did you understand that to mean in terms of
 12 the scope of what FICO was offering at that point in the
 13 negotiations?
 14 A. Okay. So within the 30 and 45 seat limitations for
 15 those two options, I can distribute that software anywhere
 16 I want.
 17 Q. Okay. Let's take a look at D58, which should be in the
 18 binder in front of you, Mr. Folz.
 19 It is not in evidence yet, but I believe there is
 20 no objection?
 21 Is that correct?
 22 MR. HINDERAKER: Yeah. That's correct.
 23 MS. GODESKY: Okay. So defendants offer D58 in
 24 evidence.
 25 THE COURT: D58 is received.

1 at Chubb Canada, Chubb Australia and Europe at this time
 2 period regarding the potential for them to use Blaze?
 3 A. Again, you know, as part of our -- during negotiations
 4 we reached out to each one of them to gauge interest, and
 5 we were receiving favorable responses.
 6 Q. So let's look at number 3 in your e-mail, the second to
 7 last paragraph.
 8 You wrote, "They've also asked that we allow them
 9 to issue a press release once we execute the deal. I told
 10 them that we do not typically do this, but would inquire
 11 with Corp Communications if we were going to do the deal.
 12 Finally, they've asked that we speak at a future client
 13 forum."
 14 Do you see that?
 15 A. Yes.
 16 Q. To what were you referring with your reference to "Corp
 17 Communications"?
 18 A. So Chubb had an overall -- non-IT-related, but an
 19 overall corporate communications department that did all of
 20 the messaging, external messaging for Chubb. That's what I
 21 was referring to.
 22 Q. What, if any, understanding did you have at the time as
 23 to why FICO wanted a press release and someone to speak at
 24 this forum?
 25 A. So within the insurance industry, Chubb is considered a

2412**2414**

1 marquis client; and FICO landing an enterprise deal with a
 2 company like Chubb is a big deal for them.
 3 Q. As someone who worked in the Chubb Group of Insurance
 4 Companies for three decades, how would you describe the
 5 brand recognition of Federal Insurance Company?
 6 A. No one outside of Chubb knows Federal.
 7 Q. Was the decision to agree to a press release for FICO
 8 in this time period typical or was it a special
 9 accommodation?
 10 A. It would have been a special accommodation.
 11 Q. Okay. Let's turn to the license agreement, which is in
 12 evidence as J1. And if we could turn to page 8, Vanessa.
 13 Do you see on the screen, Mr. Folz, there is a
 14 provision titled No Assignment?
 15 A. Yes.
 16 Q. Were you responsible for negotiating assignment
 17 provisions at Chubb?
 18 A. No.
 19 MR. HINDERAKER: Your Honor? Could we have a
 20 side-bar, and I will raise my objection?
 21 THE COURT: Approach.
 22
 23 (Side-bar discussion.)
 24 MR. HINDERAKER: Mr. Folz's e-mail communications
 25 and involvement with the license agreement began in

1 assignment provisions?
 2 A. No. Provisions like this are negotiated by our legal
 3 department.
 4 Q. Okay. So I want to look at the second amendment, which
 5 starts at J19. And this is the amendment to the license
 6 agreement that you were negotiating, right?
 7 A. Yes, it is.
 8 Q. And if we could look at the table on this first page,
 9 what was the scope of this Blaze license as amended in
 10 December 2006?
 11 A. So enterprise-wide.
 12 Q. And to what enterprise are you referring?
 13 A. The Chubb Group of Insurance Companies.
 14 Q. We saw some references in the e-mail that we were just
 15 looking at to limitations on the number of seats that could
 16 use Blaze. Do you remember that?
 17 A. Yes.
 18 Q. Did the final version of this amendment have any
 19 limitations on seats or use?
 20 A. There were no limitations on seats or use.
 21 Q. And how long was this license meant to last?
 22 A. It's a perpetual license, so it's forever.
 23 Q. What was the pricing arrangement for this license?
 24 A. So we paid -- the price was a million, three. We got a
 25 \$350,000 discount for moneys we had paid for the previous

2413**2415**

1 December with respect to Amendment Number Two. He has no
 2 foundation to discuss the license agreement as it was
 3 negotiated in June of 2006.
 4 And as Ms. Godesky's question raised was not
 5 whether he had negotiations -- I'm sorry -- about 10.8 of
 6 this license agreement, but does he have experience
 7 negotiating assignment agreements in general, not specific
 8 to this contract.
 9 THE COURT: Where are you going?
 10 MS. GODESKY: I just want to ask him, Did you
 11 have responsibilities for negotiating assignment provisions
 12 at Chubb? No. Who had that responsibility? Legal. I
 13 just want them to know I'm not addressing this with him
 14 because it's outside of his bounds.
 15 MR. HINDERAKER: I agree it's outside of his
 16 bonds, so we're on the same page. Thank you.
 17
 18 (In open court with the Jury present.)
 19 THE COURT: Mr. Folz, you will have to turn your
 20 microphone back on.
 21 BY MS. GODESKY:
 22 Q. So, Mr. Folz, we were looking at this assignment
 23 provision on the screen, right?
 24 A. Yes.
 25 Q. Did you have responsibilities at Chubb for negotiating

1 SBU-based license earlier in the year. And so it netted
 2 out that we paid a one-time fee of \$950,000, plus the first
 3 year's maintenance.
 4 Q. Vanessa, could we pull up defendants' demonstrative 22,
 5 please.
 6 Mr. Folz, have you seen this before?
 7 A. Yes, I have.
 8 Q. And is it a summary of key terms in the various license
 9 agreements?
 10 A. Yes, it is.
 11 Q. Can you walk the jury through how the Blaze license
 12 agreements changed over time?
 13 A. Yes. So it basically evolved over time. We started
 14 out -- and this is typical in the way Chubb and other
 15 companies do this. You start out, you're acquiring this
 16 capability, you want to try it out.
 17 So our first license agreement June 30th, 2006,
 18 is for a single application within the overall portfolio.
 19 So one application we could use it. On, and it was limited
 20 to five seats. Okay?
 21 Then we decided that we were going to expand the
 22 usage to one SBU, strategic business unit. Chubb had
 23 multiple strategic business units. So we were going to
 24 expand it to one. It was the SBU in which the application,
 25 the original application that we did the initial license

2432**2434**

1 Q. The evidence may be that there is a misunderstanding.
 2 But my question to you is, If you want to find out if there
 3 is a misunderstanding or if both sides have the same
 4 understanding, the place to find that answer is in the
 5 written agreement that the parties signed, being the
 6 license agreement. Do you disagree with that?
 7 A. I don't disagree. That's fair.
 8 Q. And then the Amendment One -- we know that the original
 9 license agreement was limited to the specialty lines. And
 10 then we also know, do we not, that through the various
 11 amendments, Amendment One divisional lines, the full
 12 division of the specialty, and we do agree, do we not, that
 13 as a consequence of Amendment Two, the rights to use Blaze
 14 Advisor extended now to the commercial lines of insurance
 15 that were sold.
 16 A. It extended to all lines. Amendment Two extended to
 17 all lines around the world.
 18 Q. And the allocation document that you looked at -- I'm
 19 not sure I have it.
 20 Do you recall -- the allocation document you
 21 looked at, where you had that meeting to think about
 22 allocations, I noticed that CPI was one of the lines of
 23 business for which an allocation was made. Do you recall
 24 that?
 25 A. Can I just refer to my document?

1 agreement, the Chubb entity in which this is filed is Chubb
 2 & Son, a division of Federal, right?
 3 A. That's what it says.
 4 Q. And then the -- and as I said already, the Chubb vendor
 5 management contact is Jim Black?
 6 A. Yes.
 7 Q. And then in terms of the Chubb department contact, it
 8 references Dolores Sutton, agreed?
 9 A. Agree.
 10 Q. Then in your vendor management system, we will go two
 11 documents forward. You have Amendment One that gives CSI a
 12 divisional license, and that, of course, we know is Chubb
 13 specialty. Again, the Chubb entity in which this is filed
 14 is Chubb & Son, a division of Federal. Agreed?
 15 A. Agree.
 16 Q. And as before, the vendor management contact is Jim
 17 Black?
 18 A. Yes.
 19 Q. Agreed? And now the Chubb contact is Dolores Sutton.
 20 Agree?
 21 A. I agree.
 22 Q. And then if we go to the document that is Amendment
 23 Two, again, Chubb entity is the division of Federal, Chubb
 24 & Son the division of Federal?
 25 A. Yes.

2433**2435**

1 Q. Absolutely. I'm trying to find the same thing. There
 2 we go. It's what -- your Exhibit D0067.
 3 A. Yes. I see that.
 4 Q. You see that. So 7 percent of the license fee. Do I
 5 read that correctly?
 6 A. 13 percent. 13 percent of the maintenance went to CPI.
 7 Q. And that stands for?
 8 A. Chubb personal insurance.
 9 Q. So not only did the permission to use Blaze Advisor
 10 extend to the commercial lines, it extended to the personal
 11 lines as well?
 12 A. Yes. The entire, the entire enterprise.
 13 Q. Well, like I say, we'll look at the license agreement
 14 with respect to the meaning of things.
 15 Now, did -- in your role in negotiations, did you
 16 work at all with the legal department in the drafting of
 17 the terms of the license agreement?
 18 A. Not the legal terms.
 19 Q. Okay. And I would like to, if I might, go to your
 20 Exhibit D0328.
 21 And this is, this is one of the documents that
 22 comes from your vendor management system at Chubb?
 23 A. Yes.
 24 Q. So for the, just to read this together a bit, for the
 25 software license and maintenance agreement, the original

1 Q. And again Jim Black is the contact person?
 2 A. Yes.
 3 Q. And now you, with respect to Amendment Two, are the
 4 Chubb department contact?
 5 A. Yes.
 6 Q. Okay. So that's the progression through.
 7 And I noticed, you know, from your direct
 8 examination now, as Chubb stored the information in its
 9 system, it describes it as worldwide enterprise license.
 10 But as before, you and I agree that if we're going to
 11 confirm the accuracy of that, we would go and look at the
 12 license agreement itself. Agree?
 13 A. Agreed.
 14 Q. Then let me go to D0058. And do you have that? I
 15 believe this is in evidence.
 16 Do you have that in front of you now, sir?
 17 A. Yes, I do.
 18 Q. And this is a document that's dated December 21, 2006,
 19 and the title of it is Fair Isaac - Enterprise License.
 20 And Mr. Berthiaume -- and we saw him as a signatory to the
 21 original agreement, right?
 22 A. Yes.
 23 Q. And you are -- Dolores Sutton is one of the people on
 24 the e-mail as well. And Mr. Berthiaume is saying to the
 25 management team in December 21, we -- with respect to the

2436**2438**

1 FICO Blaze Advisor license, "We got a good deal as a first
2 in."
3 Do I read that right?
4 A. Yes.
5 Q. And -- yes. And all of the pricing in terms of this
6 license agreement was pricing that was negotiated in the
7 time frame of 2006?
8 A. Can you clarify "this license agreement"?
9 Q. The license agreement that is this J1 in front of you
10 between Chubb & Son and FICO. And that license agreement
11 and the terms, but particularly the price, were all
12 negotiated in 2006?
13 A. Yes.
14 Q. Okay. Let me just look at my notes a minute more. And
15 if we could go back to the J1, please.
16 And let's just go to Amendment Two that you were
17 a part of. Do you have that?
18 A. Yes.
19 Q. All right. And I just want to see if you agree with me
20 that Amendment Two says that it's effective on a certain
21 date, December 28, and it amends the software license and
22 services agreement entered into on June 30th, and by and
23 between Fair Isaac and Chubb & Son, a division of Federal
24 Insurance Company, define term client. That's what it
25 says?

1 A. Yes.
2 Q. And Celent is what?
3 A. It's more or less like a research type organization.
4 Q. Analyze -- gives analytical reports, market reports,
5 company product reports --
6 A. Yes.
7 Q. -- in this technology space and insurance. Agreed?
8 A. Yes.
9 Q. And so FICO would like to nominate Chubb for this
10 Celent model carrier award. Did you have any role or -- in
11 the Premium Booking modernization program that's being
12 referenced in the e-mail?
13 A. No.
14 Q. Then I would like to ask you to go to Exhibit 1073,
15 please. And let me know when you have it.
16 A. It's here.
17 Q. Okay. Great. And this is from a Robert Iskols? Did
18 I --
19 A. Iskols, yes.
20 Q. To yourself and a bunch of others. And the subject is,
21 Vendor Day - Need Input Please.
22 A. Okay.
23 Q. And in the second paragraph it says, "In terms of the
24 vendors (and this is where I need your input), we will
25 adjust last year's invitee list accordingly."

2437**2439**

1 A. That's what it says.
2 Q. And so from, from your frame of reference, if someone
3 was to ask, what's the -- if someone was to ask, Is the
4 width and breadth, the full scope of the enterprise, the
5 scope of the enterprise that is the client under the
6 license agreement being Chubb & Son, a division, is that a
7 question that you would go seek legal advice on?
8 A. Yes.
9 Q. If I could direct your attention to P1180. Do you have
10 that before you?
11 A. It was here, but it went off, so --
12 Q. Okay.
13 A. It's back.
14 Q. And this is an e-mail from a Michael G. Meyer,
15 November 22, 2011, to you, right?
16 A. Yes.
17 Q. Among others, of course.
18 And the e-mail says, "Phil, FICO would like to
19 nominate Chubb for a Celent model carrier award for the
20 work we did with them on the Premium Booking modernization
21 program using their Blaze Advisor product and professional
22 services."
23 Did I read that right?
24 A. Yes.
25 Q. And Celent is a -- do you know the organization Celent?

1 Then if we go a little farther into that same
2 paragraph, "Last year's invitees were McKinsey, CAI, and
3 then Computer Associates, BCT Partners (who did not attend)
4 and Fair Isaac," among others.
5 Did I read that right?
6 A. Yes, that's what it says.
7 Q. So in 2010 Fair Isaac was considered a strategic
8 partner at Chubb, as well as 2011?
9 A. Yes.
10 Q. Thank you. And then if I -- and I am going to ask you
11 to, go to P0171A, please. And do you have that?
12 A. Yes.
13 Q. Okay. You are ahead of me. 0171. All right.
14 So 0171A is this e-mail from yourself to Ramesh
15 Pandey dated July 10, 2015, right?
16 A. Yes.
17 Q. And the e-mail references -- well, the subject line,
18 the attachment is, Chubb IT Overview for ACE. Do you see
19 that?
20 A. Yes.
21 Q. And so this time frame, even as early as July 2015, the
22 subject matter of this e-mail -- and we'll look at the
23 attachment briefly -- is the integration addressing the
24 integration plan of the technologies of the Chubb
25 Corporation and the ACE Limited companies?

2548**2550**

1 whether who can bind FICO is totally irrelevant here.

2 We're not saying that there was a new contract

3 formed or anything like that. We're just saying it was a

4 bad faith claim. And the jury, if they want to say that,

5 you know, these people -- they could say whatever they

6 want, right, and I'm sure -- they would have said all the

7 same things under their 3.1 claim, whatever they're going

8 to say in defense to our bad faith argument.

9 But the scope of authority is about who can bind.

10 And that's not what this claim is about. It's about bad

11 faith.

12 THE COURT: Here's -- well, I'm not going to do

13 the instructions that you suggested, Mr. Hinderaker, but my

14 understanding of this claim, even in light of what I said,

15 was that the bad faith that is alleged occurred in 2016,

16 when Mr. Carretta and others took the position that you say

17 is unfounded.

18 Well, and the court has found that it's not in

19 the contract, but that is the bad faith, that they relied

20 on a territorial restriction that isn't in the contract.

21 And, of course, quite obviously, FICO can respond

22 to that by pointing to the terms of the license and to the

23 testimony in which they have explained why it wasn't in bad

24 faith. Okay? All right.

25 Copyright infringement.

1 THE COURT: I'm on page 21, infringement damages.

2 MR. METLITSKY: Oh, I was going to the next one.

3 Sorry.

4 THE COURT: Determination of actual damages.

5 And is that where we have the issue?

6 MR. METLITSKY: Yeah. So like right in the

7 middle of the second paragraph, there's a capital L.

8 THE COURT: That's coming out.

9 MR. METLITSKY: Yeah. And at the beginning of

10 that paragraph, we think it should say a licensor and a

11 licensee because it's hypothetical.

12 THE COURT: I've been thinking about that since

13 you raised it yesterday, and I'm going to not make that

14 change for two reasons:

15 Number one, I think this is an accurate statement

16 of the law, and I think it is fair for this jury to

17 consider FICO and Federal; but even with that, the phrase

18 "the licensor and the licensee" can certainly be read by a

19 jury in a generic sense.

20 So I'm not going to make that change, but I am

21 taking out the capital.

22 Mr. Hinderaker, any other?

23 MR. HINDERAKER: No, Your Honor.

24 MS. GODESKY: Your Honor, may I raise an issue

25 with regard to actual damages?

2549**2551**

1 Proof of damages.

2 MR. METLITSKY: Your Honor, my only comment on

3 this was that we should do a nominal damages charge.

4 THE COURT: And that is in here. It's coming.

5 MR. METLITSKY: Okay.

6 THE COURT: So the next one is breach of

7 contract, implied covenant damages. And then after that,

8 it's nominal damages because nominal damages only apply to

9 those claims.

10 MR. METLITSKY: Okay.

11 THE COURT: And you've received the nominal

12 damages instruction, correct?

13 MR. METLITSKY: Yes.

14 THE COURT: All right. Next one, infringement

15 damages.

16 MR. METLITSKY: Your Honor?

17 THE COURT: Yep.

18 MR. METLITSKY: Two little points, but I think

19 they're important. First of all, licensor in the middle

20 here is capitalized.

21 THE COURT: Yeah.

22 MR. METLITSKY: Yeah. And it also says the

23 licensor and the licensee, and we think it should --

24 THE COURT: Oh, you are on a different --

25 MR. METLITSKY: I'm sorry. Where are we?

1 THE COURT: You may.

2 MS. GODESKY: So in light of the court's ruling

3 on that there can be no breach of 3.1, vis-à-vis the

4 foreign affiliates.

5 THE COURT: Right.

6 MS. GODESKY: We would request an instruction

7 that the jury, an explanation and instruction that the jury

8 was presented with certain license fee calculations by

9 Mr. Waid, including use in Canada, Australia and Europe,

10 right, his \$50 million number that was constructed around

11 Chubb's actual use, right, and then Mr. Hinderaker walked

12 him through how you would apply that to the, quote unquote,

13 "standard pricing guide at FICO."

14 But I think we need, you know, some guardrails

15 along with your instruction about how that's no longer in

16 the case. I think we need to be telling them, you know,

17 I'm just sort of thinking about it now, right, but there

18 needs to be some sort of instruction and explanation as to

19 how more than half of the damages that they've been

20 presenting are out of the case, in terms of that

21 hypothetical license fee.

22 THE COURT: I have to confess that I don't

23 remember the numbers specifically with respect to that

24 issue. I thought you were going to the, I think the

25 Zoltowski issue of 154 million, which is --

2552

1 MS. GODESKY: That too.

2 THE COURT: -- also in the case.

3 MS. GODESKY: Yes, that too. But the \$50 million
4 hypothetical license fee was built around the assumption
5 that it would be possible, you know, that there's a need to
6 find a license fee that would cover infringing use by
7 Canada, Australia and Europe.

8 So I just, I think we need to level set with the
9 jury in terms of what's changed.

10 MR. HINDERAKER: A comment: We were very
11 careful, and the court was quite instructive and direct, in
12 the fact that after applications were sized, if you will,
13 that pricing matrix against the defendants' data, the next
14 slides and all of the next slides on the named application
15 license never identify an application.

16 The testimony was, if you have a certain mix, and
17 here we have some very large, some large, this is how the
18 pricing works out. It was never identified to be an
19 application in the U.S. or anywhere and never identified to
20 be an application. So there isn't that issue.

21 Secondly, when the testimony turned to, well, how
22 would you price it with a perpetual, again, there was never
23 a reference to -- we had a hypothetical \$35 billion company
24 and we had a hypothetical \$3.5 billion company. It was
25 never identified where does 3.5 come from.

2553

1 We just, the jury just heard, well, let's see how
2 it works out if you have a tenth of the size of the
3 company, and that's the information that they got.

4 THE COURT: And the infringing use at the point
5 of the hypothetical negotiation is not based on whether the
6 affiliates could use it while the license was in play. So
7 I don't think I should do that instruction. There just --

8 They're hypothetically negotiating over the use
9 that was made, which includes Canada and the UK, maybe not
10 much of Australia. But, in other words, it's still
11 appropriate to consider that use because the infringement
12 isn't based on the territory restriction.

13 You are not following me.

14 MS. GODESKY: No. I'm following you on the
15 infringement piece.

16 THE COURT: Okay.

17 MS. GODESKY: But I still think there's a big
18 problem on the actual damages piece, because, you know,
19 whether the slides were labeled Chubb's use of Blaze or
20 not, Mr. Waid walked through, Chubb had a very large
21 application in Australia. I'm making up the country,
22 right, but it was very large in Australia, and it was used
23 for four years. And then the chart he put up right after
24 that was very large, four years, price, and all of it
25 totaled up to \$50 million.

2554

1 So, you know, if the jury is tracking what was
2 being presented, they're thinking that there's a
3 \$50 million license fee covering the use that was discussed
4 during Mr. Waid's direct examination.

5 THE COURT: Prior to 2016.

6 MS. GODESKY: Correct.

7 MR. HINDERAKER: Well, \$50 million isn't all

8 prior to 2016, but the -- the jury is going to be
9 instructed -- the jury is going to hear the court's
10 instructions. The argument is going to conform with the
11 court's instructions and the court's rulings.

12 And from the termination of the license
13 agreement, we will be looking at those applications, and we
14 will be going through the sizing and pricing and the
15 testimony that relates only to those applications.

16 Some of those applications will be the Canadian
17 application and will be the UK application for license fee
18 because those uses carried on after the license agreement
19 was terminated.

20 So today the client is Federal. Today they're
21 affiliates of Federal, and they were clients and affiliates
22 but not after March 31, 2016. So those application names
23 are going to be in the case as well. I think the jury's
24 just going to hear our closing argument in light of your
25 instructions.

2555

1 And will the numbers be different overall? Sure.
2 But they're going to hear what we're asking for.

3 THE COURT: As I'm hearing all this, it strikes
4 me that Mr. Metlitsky's suggestion back on construction of
5 the license agreement with adding a sentence that says that
6 I found that -- this isn't the exact language I'll use, and
7 you get to see the language.

8 But prior to 2016, the license -- it was not a
9 violation of the license agreement to use the software by
10 Chubb Canada, Chubb Australia, Chubb UK. And I think that
11 will give you what you need in final argument to discuss
12 what you need about the numbers for the actual damages.

13 I understand your concern.

14 MS. GODESKY: May I reference that expressly?

15 You know, the judge just instructed you that --

16 THE COURT: Yes.

17 MS. GODESKY: -- however it is that you phrase
18 it.

19 THE COURT: Yes.

20 MS. GODESKY: And then address it that way?

21 THE COURT: Yes.

22 MS. GODESKY: My second -- I would propose, just
23 so we're all on the same page, that at a certain time
24 tonight soon, to the extent there's going to be a
25 demonstrative that would summarize --

2556**2558**

1 You know, Mr. Waid put up his demonstrative that
 2 they got to 50 million. I would expect they would have
 3 probably used that in closing.
 4 I think I have to close first. I'm sort of
 5 flying blind, you know. Mr. Hinderaker is saying it's
 6 going to conform to the court's ruling, but I think it
 7 would be in everyone's interest for us all to just make
 8 sure we don't have any dispute about that before openings
 9 start in terms of, if you take the \$50 million number and
 10 extract the pre-2016 use, right, what's the number and how
 11 are they going to say they get there?
 12 THE COURT: I think that's fair, but --
 13 MR. HINDERAKER: I hope that both sides exchange
 14 their --
 15 THE COURT: Right.
 16 MR. HINDERAKER: -- their demonstrative slides.
 17 I hope both sides exchange their demonstrative slides
 18 timely after they're prepared.
 19 THE COURT: They will.
 20 MR. HINDERAKER: But I can't exchange what I
 21 don't have.
 22 THE COURT: No, I understand.
 23 So if you both need me to set a time, I will, but
 24 it seems to me that you guys are better off just agreeing
 25 on a time at which you will exchange those tonight at a

1 this --
 2 MS. GODESKY: I think it takes out more than
 3 half, but, you know --
 4 THE COURT: That should be a matter of testimony.
 5 Isn't it already in the record?
 6 MR. HINDERAKER: Sure. She has the information
 7 from the slides from -- and our demonstratives with
 8 Mr. Waid. It's a matter of just doing the math.
 9 THE COURT: Okay.
 10 MS. GODESKY: Okay.
 11 THE COURT: Okay.
 12 MR. HINDERAKER: I mean, we know the
 13 applications. We know the new time period.
 14 THE COURT: Well share the number with each other
 15 in case you don't agree. Okay?
 16 MR. HINDERAKER: Once we figure out -- yeah, but
 17 it's math for us too. Just have to do the math. So I'm
 18 happy -- let me back up for a moment.
 19 I'm happy to share the number once we have it.
 20 And then if we're not going to exchange closing slides, I
 21 get that point as well. But then maybe there's no reason
 22 for us to send you a slide.
 23 THE COURT: There is none. I agree with you.
 24 Share the number. Make sure you are on the same page. If
 25 you are not on the same page, I expect I will hear

2557**2559**

1 reasonable hour, recognizing lawyers' definition of
 2 "reasonable" in this context.
 3 MS. GODESKY: So we did not have an agreement to
 4 exchange demonstratives for closing. I mean, is it the
 5 court's order that we need to do that in terms of, you
 6 know, I mean, most of this is in evidence.
 7 THE COURT: Right. Well, you're going to have to
 8 exchange it before you give the closing, obviously, yes.
 9 You know, let me put it this way:
 10 Well, nobody wants a situation where somehow a
 11 demonstrative is used during closing that is wildly
 12 inappropriate or would constitute some grounds for arguing
 13 error or objecting even.
 14 I take your point. I guess the parties probably
 15 don't want to exchange them before closing; and if that's
 16 the case, then I would say -- I take Mr. Hinderaker at his
 17 representation, but let's do this:
 18 If you're going to use a slide about that actual
 19 damages negotiation, why don't you at least submit it to me
 20 for in camera review this evening. And, Ms. Godesky, if I
 21 have no concern with it, we'll have to go.
 22 MS. GODESKY: That's fine with me, Your Honor,
 23 but I would ask that we should know what the number is.
 24 You know --
 25 THE COURT: What is the number? I mean, is

1 something.
 2 MR. HINDERAKER: You will hear.
 3 MS. GODESKY: Thank you.
 4 THE COURT: Other than -- okay. So I think we're
 5 done on determination of actual damages, having rejected
 6 Mr. Metlitsky's request.
 7 Profits -- and by the way, thank you parties
 8 for -- I don't know what lodged in my brain that I called
 9 this throughout lost profits, but thanks for pointing that
 10 out.
 11 Profits.
 12 Page 24, Profits: Indirect profits.
 13 MR. HINDERAKER: Is that a necessary instruction?
 14 It is, of course, an indirect profits case, but I don't see
 15 how it matters to the jury.
 16 THE COURT: Yeah, I've been thinking about that.
 17 I don't know that it is a necessary instruction.
 18 MR. METLITSKY: Leave it up to you, Your Honor.
 19 THE COURT: So we'll take it out.
 20 Profits: Plaintiff's burden.
 21 MR. HINDERAKER: We have some comments.
 22 THE COURT: Okay.
 23 MR. HINDERAKER: The first comment is the use of
 24 the word "causal." We have no quarrel with the use of the
 25 word "nexus." You know, we referenced Judge Wright's

2560**2562**

1 decision, of course, and on page 7, I think it's 7, it is
 2 page 7. "In doing so the copyright owner has the initial
 3 burden to demonstrate a nexus between the infringement and
 4 the infringer's profits."
 5 The word "causal" isn't there.
 6 THE COURT: It's not in her order; I would agree
 7 with that.
 8 MR. HINDERAKER: And it starts to sneak up on
 9 these arguments of "but for." And I think nexus serves the
 10 same purpose as causal without the mischief of suggesting
 11 that it's more than a nexus.
 12 THE COURT: My recollection is that Andreas ^
 13 used that word. One of the cases cited here did. I
 14 thought it was Andreas.
 15 Yeah, it was Andreas.
 16 MR. HINDERAKER: I know that she's cites Andreas
 17 as support for the sentence that I just read. I don't have
 18 the case in front of me to know one way or the other.
 19 THE COURT: All right.
 20 MR. HINDERAKER: The next sentence, of course, is
 21 after that nexus is established, then the burden shifts.
 22 THE COURT: Okay. Let me do this -- well, let me
 23 first hear from Mr. Metlitsky on this particular.
 24 MR. HINDERAKER: Okay. I have some more comments
 25 on this instruction.

1 So here it would be the third line, this is
 2 referred to as attribution. FICO must identify defendants'
 3 revenues that are attributable at least in part to the
 4 alleged infringement.
 5 Now, the court uses that phrasing in the special
 6 verdict at question nine. I don't think it's arguable that
 7 that is the legal standard. And so we would ask that that
 8 phrase be added to plaintiff's burden.
 9 THE COURT: As long as you're speaking,
 10 Mr. Hinderaker, other comments on this before I turn back
 11 to Mr. Metlitsky?
 12 MR. HINDERAKER: No, not on this instruction.
 13 Oh, I guess there is one more.
 14 MS. KLIEBENSTEIN: You got it.
 15 MR. HINDERAKER: Oh, yeah. So I was just
 16 pointing out where that same phrase should be added. Where
 17 you sum up at the end of the paragraph, that is, FICO must
 18 show that the use of Blaze Advisor contributed, and it
 19 should be again at least in part to the generation of the
 20 revenue, just to be --
 21 THE COURT: Consistent.
 22 MR. HINDERAKER: -- consistent.
 23 MR. METLITSKY: Your Honor, we object. We object
 24 to that.
 25 THE COURT: I know you do.

2561**2563**

1 THE COURT: Yep.
 2 MR. METLITSKY: Your Honor, so we would object to
 3 taking out "causal." We think that's the standard. It's a
 4 causation standard.
 5 And, you know, we don't see any reason to take it
 6 out. The fact that it wasn't in Judge Wright's opinion,
 7 she wasn't writing a jury instruction. So --
 8 THE COURT: Well, and let's be clear about
 9 something. I -- it's not a "but for" standard. And
 10 nobody's going to be arguing that it is. Right? Okay.
 11 MR. METLITSKY: Nobody's going to be arguing that
 12 it is, but the word "causal" is in Andreas many, many times
 13 so we would --
 14 THE COURT: All right. Mr. Hinderaker, keep
 15 going.
 16 MR. HINDERAKER: I'm just looking at Andreas.
 17 Andreas argues that he met his burden by
 18 establishing a causal connection. We don't have to read
 19 the full case here, but I think a quick reference to
 20 Andreas conforms with Judge Wright's expression of what
 21 Andreas stands for, and nexus is not a component.
 22 My second point is, and the court made this
 23 change some places, that is to add the phrase "at least in
 24 part," which conforms with Andreas, conforms with the
 25 Honeywell case and conforms with Judge Wright.

1 MR. METLITSKY: Yeah.
 2 THE COURT: All right. I'll put that one aside
 3 for the moment.
 4 MR. METLITSKY: Can I explain my objection?
 5 THE COURT: Yes, by all means.
 6 MR. METLITSKY: So on the first one,
 7 "attributable to" that's just language from the statute.
 8 You should not be adding language to, you know, statutory
 9 language.
 10 And I don't think it's correct. I mean,
 11 "contributed to at least in part" is wrong. "Contributed
 12 to" already means at least in part. That's, it's already
 13 implied in the phrase.
 14 "Contributed to at least in part" is nowhere in
 15 Andreas. And the problem with "at least in part" is, it
 16 leads into the issue that we were discussing earlier where
 17 you are a small part of a big application, and they're
 18 going to think that that means that just because the big
 19 application contributes to revenue, this then contributes
 20 in part.
 21 That language is not in the governing case in the
 22 Eighth Circuit. And so I do not think we should add it
 23 because it's going to cause mischief.
 24 THE COURT: Well, and I understand your point. I
 25 am inclined to agree. And, frankly, because of this

1 the opinion and all other evidence in the case.

2 Testimony has been presented to you in the form of
3 a deposition. A deposition is the recorded answers a
4 witness made under oath to questions asked by lawyers before
5 trial. The deposition testimony you have seen has been
6 electronically videotaped and that recording played for you.
7 You should consider the deposition testimony and judge its
8 credibility as you would that of any witness who testifies
9 here in person.

10 During the trial you have heard testimony from
11 witnesses who appeared in their capacity as the parties'
12 corporate designee. Those witnesses were authorized to
13 speak on behalf of the organization about information known
14 to the organization. Those witnesses were standing in the
15 shoes of the organization and were not testifying as
16 individual persons.

17 The following witnesses were designated to testify
18 as their corporate representatives: Claudio Ghislanzoni,
19 Henry Mirolyuz, John Taylor, William Waid.

20 Exhibit P1116 was introduced for a limited
21 purpose. It is to be used only as evidence of when and how
22 Mr. Waid learned of DWS's access to Blaze Advisor. You may
23 only consider Exhibit P1116 for that purpose.

24 Some of the exhibits introduced during trial are
25 software licensing agreements between FICO and companies

1 other than Federal. These agreements have been introduced
2 for a limited purpose.

3 You may consider the agreements for whatever value
4 they may have in your decisions about the hypothetical
5 license negotiation, which you will hear about shortly. The
6 agreements may also be used to illustrate other language
7 that the parties might have used in their agreement.

8 The agreements, however, are not evidence of the
9 parties' mutual intent as to the meaning of the software
10 license agreement in this case.

11 Certain charts and summaries have been shown to
12 you in order to help explain the facts disclosed by books,
13 records or other underlying evidence in the case. Those
14 charts or summaries are used for convenience. They are not
15 themselves evidence or proof of any facts.

16 If they do not correctly reflect the facts shown
17 by the evidence in the case, you should disregard these
18 charts and summaries and decide the facts from the books,
19 records or other underlying evidence.

20 As you have heard, FICO seeks to recover damages
21 for breach of contract. FICO had a contract with Federal,
22 the license agreement, that set the terms under which
23 Federal could use FICO's Blaze Advisor software.

24 FICO claims that Federal breached the contract by
25 allowing unauthorized persons or entities to use the

1 software, by failing to obtain consent for the continued use
2 of Blaze Advisor after the merger or by continuing to use
3 Blaze Advisor after FICO terminated the agreement.

4 Federal claims that it did not breach the
5 agreement. It claims the merger did not violate
6 Section 10.8 of the agreement, that any use by unauthorized
7 persons or entities was not a breach, and that FICO's
8 termination of the agreement was ineffective and was itself
9 a breach of the license agreement by FICO.

10 The party who claims breach of contract has the
11 burden of proving by a preponderance of the evidence that it
12 had a contract with the other party, that it did what it was
13 required to do under the contract, that the other party
14 breached the contract by not doing what it was required to
15 do under the contract, and that the breaching party
16 sustained damages because of the other's breach.

17 If you decide that Federal breached the license
18 agreement in any of the ways FICO has alleged, you will find
19 for FICO on its breach of contract claim, and you will go on
20 to consider FICO's damages against Federal.

21 If you decide that Federal did not breach the
22 license agreement, you will find for Federal on FICO's
23 breach of contract claim.

24 If you decide that FICO breached the license
25 agreement, as Federal as alleged, you will find for Federal

1 Damages must be proved with reasonable certainty.
2 You may not award damages that are speculative, that is,
3 damages that might be possible, but are based solely on
4 guess work.

5 The party seeking damages is not required to prove
6 the exact amount of its damages, but must show sufficient
7 facts and circumstances to permit you to make a reasonable
8 estimate of the damages.

9 If you find any party is entitled to a verdict on
10 more than one of its counts, you should take care to avoid
11 awarding duplicative damages.

12 Hold on one second.

13 If you find that either FICO or Federal are owed
14 damages for breach of contract or breach of the implied
15 covenant of good faith and fair dealing, you should award
16 that party damages in the amount that is required to make
17 them whole.

18 Damages on a breach claim are intended to replace
19 the loss caused by the breach and place the party in as good
20 a position as it would have been in had the other party not
21 breached the contract or the implied covenant.

22 If you find that plaintiff has proved that
23 defendant has infringed plaintiff's copyright, then you must
24 determine the amount of damages, if any, plaintiff is
25 entitled to recover. If you find that plaintiff has failed

1 to prove the claim, then you will not consider the question
2 of damages.

3 Plaintiff must prove damages by a preponderance of
4 the evidence. Plaintiff may recover for any actual losses
5 it suffered because of the infringement, plus any profits
6 that defendant made from the infringement.

7 I will define these terms in the following
8 instructions.

9 The measure of actual damages for FICO's breach of
10 contract claim and its copyright infringement claim is the
11 fair market value of a license to use Blaze Advisor. The
12 fair market value is the license fee that a willing buyer
13 and a willing seller would have negotiated for the allegedly
14 improper or infringing use that was made.

15 The license fee is the amount that the licensor
16 and the licensee would have agreed to in a hypothetical
17 negotiation for a license covering the allegedly infringing
18 use that was made.

19 In considering this hypothetical negotiation, you
20 should focus on what the expectations of the licensor and
21 the alleged infringer would have been had they entered into
22 an agreement at that time and had they acted reasonably in
23 their negotiations.

24 In determining this, you must assume that both
25 parties were willing to enter into an agreement. The

1 license fee you determine must be a fee that would have
2 resulted from the hypothetical negotiation, not simply a fee
3 either party would have preferred.

4 Breach of contract and breach of the implied
5 covenant of good faith and fair dealing claims allow for
6 nominal damages.

7 If you find for FICO on their breach of contract
8 claim against Federal or you find for Federal on their
9 breach of contract or breach of the implied covenant of good
10 faith and fair dealing claim against FICO, but you find that
11 the prevailing party has failed to prove damages as defined
12 in these instructions, you must award nominal damages.
13 Nominal damages may not exceed \$1.00.

14 That instruction just pertained to the breach of
15 contract claims and the breach of implied covenant claims.
16 Now I'm returning to the copyright infringement measure of
17 damages.

18 In addition to recovering its actual damages, if
19 you find defendants infringed FICO's copyright, FICO may
20 recover the profits that defendant received because of the
21 infringement. Defendants' profits are recoverable, however,
22 only to the extent that you have not taken them into account
23 in determining actual damages.

24 The following three instructions all relate to
25 your calculations of profits of the infringer, of the

1 anyway.

2 I would like to begin by telling a story. It's a
3 story about -- I mentioned -- it's a story about my
4 neighbor, a neighbor. And, you know, I mentioned when we
5 were selecting the jury, when you all were selected, that I
6 live in South Minneapolis, and I'm in one of those areas of
7 South Minneapolis that has an alley. So the block is
8 divided by the alley, and there is that side and this side.
9 And the alley is where neighbors meet, one of the places.

10 And Emmett Duffy has passed now, but for years
11 Emmett Duffy was retired from the Department of
12 Transportation, Minnesota state, and was the block captain,
13 if you will. Everybody knew Emmett, and Emmett knew
14 everybody else. And so I would be chatting with Emmett; and
15 Emmett would say to me often, Did you get it in writing?
16 And that was his wisdom. If you're talking about something,
17 did you get it in writing. And that wisdom of Emmett is one
18 of the things that this lawsuit is about, because FICO and
19 Federal got it in writing and the writing is the lawsuit.

20 The consequences -- this lawsuit was brought
21 because the license agreement and the writing in that
22 license agreement have consequences when they're not
23 honored. And the lawsuit was also brought because under the
24 copyright law, there are consequences from infringing
25 somebody else's intellectual property. These two core

1 elements are what we seek to hold the defendants responsible
2 for.

3 And in doing that, there is another piece of
4 wisdom, and this one comes from a 14th century philosopher
5 and theologian by the name of William of Ockham. And his
6 piece of wisdom is now -- that is attributable to him is now
7 called Occam's razor. And Occam's razor is simply this:
8 The simplest explanation is usually the best one.

9 Now, there are parts of this lawsuit that are
10 complex. Blaze Advisor software is complex. The corporate
11 structure of the Chubb Corporation is complex. The
12 corporate structure of ACE Limited, now Chubb Limited, is
13 complex.

14 But I submit to you in your deliberations the
15 answers to the fundamental questions that you will be
16 deciding are found in the simplest explanations, and they're
17 found in the words that were put in writing in the license
18 agreement.

19 I submit to you from what you have heard in this
20 lawsuit, if the shoe were on the other foot, would Federal
21 Insurance or ACE Insurance Company be arguing that you
22 should ignore the plain words of the license agreement?

23 And before we go, let me say a word about
24 disgorgement. The evidence shows that Federal infringed
25 FICO's copyrights when it continued to use Blaze Advisor

1 without FICO's permission after the license agreement was
2 terminated. During that period of time, Federal acted like
3 it was the owner of Blaze Advisor. And then a different
4 company called ACE American, as you know, a different
5 company in January 1, 2017, decided that it would be the
6 user of Blaze Advisor, and it then acted as if it owned it.

7 ACE American has never had permission to use Blaze
8 Advisor in connection with selling insurance like it did in
9 this case. And so they did so from January 2017 until some
10 time in April 2020. And because of that length of time, the
11 revenue amounts, the gross revenue amounts, that are
12 connected to the infringing use of Blaze Advisor, they are
13 huge. 21 billion is a huge amount of money. But when you
14 look at 21 billion in the context of all of the revenue that
15 Chubb Limited had over that same period of time, that 21
16 billion is 14 percent. 14 percent is not a big number.

17 If Federal had stopped use when the license
18 agreement terminated, we wouldn't be here talking about
19 disgorgement. There would be none. If ACE American never
20 thought it owned Blaze Advisor and used it without FICO's
21 permission, we wouldn't be here talking about disgorgement,
22 because there would be none.

23 The disgorgement arises from their infringement.
24 The size of the disgorgement is because they are so huge.
25 But the disgorgement is -- and I might say, the disgorgement

1 is not compensation to FICO. The disgorgement is the
2 consequence that the copyright laws say follow when you
3 infringe intellectual property.

4 So let me go -- let me provide an overview of
5 FICO's claims to try to focus on what we actually are
6 contending.

7 We have both the defendants, of course; and while
8 the claims overlap, they also are different. So against
9 Federal, we have the breach of paragraph 10.8. And 10.8
10 occurs when there is an event that significantly changes the
11 circumstances of the client, significantly changed the
12 circumstances of the client's use of Blaze Advisor.

13 So at the time of the original license agreement,
14 Blaze Advisor was going to be used in a 12-billion-dollar
15 company. Because of one of the events of paragraph 10.8,
16 Blaze Advisor is now going to be used in a 35-billion-dollar
17 insurance company. That's a big difference.

18 Now, Federal did not request FICO's consent, and
19 Federal and FICO could not agree. And so after 60 days, not
20 immediately, 60 days after Mr. Carretta's notice of breach
21 letter, FICO terminated the license agreement. And Federal,
22 rather than honor a license agreement or use software only
23 with permission, treated it as its own and did not stop use.

24 So that's paragraph 10.8. I submit that on all
25 the evidence, there is really no serious dispute that may

1 proud. They got a great deal, he said. First in. He paid
2 FICO half of what his budget was to license Blaze Advisor.
3 Completely aligns with Bill Waid's testimony of the dynamics
4 in 2006. Chasing revenue. Not true in 2016.

5 So the way FICO would in the normal case, in this
6 circumstance, they would price based upon what's called a
7 named application pricing. And as all value pricing at
8 FICO, it depends on the size of the application. The bigger
9 the application, the more the fees; the smaller the
10 application, less the fee.

11 And so he started with the defendants' own
12 information. It's Plaintiff's Exhibit 517 in the record,
13 Plaintiff's Exhibit 517. That's where, the starting point.
14 And then he takes and applies -- and you saw he applied --
15 he took the relevant information out of that document that
16 he would use in sizing an application. And then I'm just
17 going to go through this one, not all of them. And then he
18 showed you how he took that information with CSI Express,
19 and he sized it across all of the factors of the pricing
20 matrix, and he got to the conclusion that that wasn't very
21 large.

22 So then the next step on a named application
23 license was to look at, Well, given the different sizes,
24 what is our -- looking at our guidelines, what's our
25 deployment fee? Is there a multi platform uplift? What are

1 the development seats? What's the annual development fee.
2 And then you drive an annual fee. 8 million, 250. One can
3 say that that's a lot of -- that's a big number, and, of
4 course, it is. One can also say, that's a lot of
5 applications that you're using without permission, and that
6 is true, too.

7 Now, the shortest period of time that FICO
8 licenses for is one year. So Federal used it unauthorized,
9 infringed, Blaze Advisor for nine months; but because the
10 shortest period of time that we license for is one year,
11 Federal pays a one-year fee. The same is true on ACE
12 American.

13 Some of ACE American's use went into 2020. If you
14 want to have a license for 2020, you buy a year. You don't
15 buy it by the month. So that will go into the -- that will
16 go into the next slide where you say, all right, you've got
17 all those applications. You have an annual fee. How many
18 years?

19 And on the standard FICO pricing, the beginning of
20 negotiations, \$36,542,831 standard FICO fee with that many
21 applications for those many years. And that, of course, is
22 the beginning, the start of the negotiations.

23 Are there other factors that come into play? Of
24 course. Does the licensee have a say, have an oar in the
25 water? Of course. But neither party gets to have a fee

1 just because it's the fee that they want. You have to
2 consider what they can get in the dynamics of the
3 negotiation at the time. How much will they move their
4 position in the dynamics of the negotiation at the time?

5 And Mr. Waid, from his experience, identified
6 these factors that would be ones that would -- he's seen and
7 ones that would move him one way or the other.

8 So let's say this client had existing revenue
9 streams, in addition to what was being negotiated. Well,
10 that would influence Mr. Waid in the negotiations, and it
11 would influence the licensee to say, Hey, let's reduce the
12 price on this one because I'm already buying licenses on
13 these other products; but if the licensee has no other
14 products from Blaze Advisor, there is no other license
15 stream or the licensee has no leverage, and FICO has no
16 incentive to change. And the same kind of dynamic goes down
17 through -- I'm sorry -- goes down through the rest.

18 Well, okay, we have this license agreement, but
19 does FICO have the opportunity to sell more product? If so,
20 it will reduce its price to get in -- to have the
21 opportunity to sell more product; if not, doesn't change the
22 deal. Those are the dynamics. You have to consider all and
23 each one as you and I -- as you run through a hypothetical
24 negotiation.

25 You look at the business impact from the use of

1 of Blaze Advisor in a 30 billion dollar organization went to
2 the very core of the purpose of paragraph 10.8.

3 Now I want to point out to you question 5, and
4 what I particularly want to point out to you is the note.
5 If you answered yes to question 3, the license agreement was
6 properly terminated, then there was copyright infringement.
7 It follows like night and day.

8 Similarly with number 6. That is to say, when you
9 answer the actual, the loss license fee amount for 4, the
10 same amount will be for 6 under The Copyright Act. FICO
11 doesn't say otherwise. Same amount.

12 Now I think the rest are, talked about the proof
13 of, the proof of ACE American's liability for infringement.
14 The dollar amounts. I've talked about the profits and what
15 FICO's burden is is the revenue, number 9.

16 And then you put in an amount, 10. And then 11,
17 that's where the defendants' burden comes in.

18 What are the costs? Have they proven any? For
19 what years? Have they proven any apportionment?

20 Now, if you find in favor of FICO for any of those
21 reasons, 1, 2 or 3, you don't have to bother with part 4,
22 but I want to make only this comment about part 4: As it
23 says here, it's defendant -- it's Federal's claim against
24 FICO. In the argument it was called defendants' claim.
25 Actually it's Federal's claim.

1 You recall that Federal stopped -- you recall that
2 Federal used Blaze Advisor unchanged from the moment the
3 license agreement terminated until December 31, 2016. On
4 January 1, 2017, no employees at Federal.

5 Federal incurred zero damages, zero costs.
6 Federal incurred nothing with respect to migrating away from
7 Blaze Advisor because it didn't.

8 The testimony of Mr. Ghislanzoni when in 2019 and
9 then into 2020, ACE American got around to taking Blaze
10 Advisor out of the systems, that's a different kettle of
11 fish. It's not damages because FICO didn't do -- wasn't
12 responsible for it, but it certainly isn't Federal's damages
13 because it was incurred by ACE American.

14 So I've had my, I've had my say on behalf of FICO,
15 but I want to conclude simply by saying this: I mentioned
16 during the, again, during the jury selection process that I
17 think it's, I think it's a great honor to directly, to
18 directly participate in our country's rule of law.

19 And I thank you for your service.

20 MS. GODESKY: Your Honor, may I approach?

21 THE COURT: You may.

22 **(Side-bar discussion.)**

23 MS. GODESKY: Your Honor, we have an objection to
24 one of the arguments made by Mr. Hinderaker when he put up
25 the numbers on the screen relevant to the actual damages

1 claims idea of hypothetical license fee. He said something
2 like, you may say that's a big number, but I say that's a
3 lot of applications that you're using without permission.

4 And so that is a direct infusion into the
5 hypothetical negotiation this concept that you're using the
6 software without permission. You are an infringer, and
7 you're negotiating to continue your use of Blaze without a
8 license.

9 And that was made even worse by the fact that he
10 referred to the period of time that the infringing user
11 needs a license, how much will people improve their position
12 with the dynamics in place at the time.

13 So all of this is what we were trying to avoid by
14 moving to exclude this type of testimony from Mr. Waid in
15 the first place, but certainly in the boundaries of what you
16 told us we could argue.

17 You can't say, you had a lot of applications you
18 were using without permission. That's not the context of
19 this negotiation. So we would request a curative
20 instruction.

21 MR. HINDERAKER: May I go get your instructions,
22 Your Honor?

23 THE COURT: You may.

24 MR. HINDERAKER: Because I was just using your
25 words. Actual damages. The willing buyer and willing

1 seller would have negotiated for the allegedly improper or
2 infringing use that was made. I'm just using your language.

3 THE COURT: Well, here's where we are. I do --
4 it's pretty clear that the fact of infringement cannot be
5 considered in arriving at the actual damage -- it's clear
6 that the fact of infringement is not a factor that can be
7 used in the hypothetical negotiation.

8 And so the instruction is intended to say, or does
9 say, for the use that was made.

10 What I will do is, I will repeat the instruction,
11 at least in part, to say that it is what a willing seller
12 and a willing buyer agreed to.

13 MR. HINDERAKER: I obviously have no quarrel with
14 that. I was trying to follow the instruction.

15 THE COURT: Understood.

16 MR. HINDERAKER: Yeah. Thank you.

17 MS. GODESKY: Thank you.

18 **(In open court with the Jury present.)**

19 THE COURT: Members of the Jury, in a second I'm
20 going to give you the final instruction, but while I'm
21 looking for one thing, go ahead and stand up and stretch.

22 We're five minutes or so from being done. Okay?

23 **(Pause.)**

24 THE COURT: Counsel, if you will both approach.

25 **(Side-bar discussion.)**

1 THE COURT: I am going to add a sentence that
2 says, "The fact that one party is alleging infringement may
3 not be considered." That is the law.

4 MR. HINDERAKER: The fact that one party is
5 considering infringement is a fact that must be decided by
6 the jury, yeah. No problem.

7 MS. GODESKY: Thank you.

8 **(In open court with the Jury present.)**

9 THE COURT: All right. Members of the Jury, I am
10 going to repeat an instruction and elaborate on one aspect
11 of it that I gave you earlier before the closing arguments.

12 And that is to this determination of actual
13 damages in the hypothetical negotiation. The measure of
14 actual damages for FICO's breach of contract claim and its
15 copyright-infringement claim is the fair market value of a
16 license to use Blaze Advisor.

17 The fair market value is the license fee that a
18 willing buyer and a willing seller would have negotiated for
19 the use that was made. The fact that one party is alleging
20 that the use was infringing or improper is not to be
21 considered in determining the outcome of that hypothetical
22 negotiation.

23 All right. Here is your final instruction:

24 There are the rules you must follow when you go to
25 the jury room to deliberate and return with your verdict.

1 First, you will select a foreperson. That person will
2 preside over your discussions and speak for you here in
3 court.

4 Second, your verdict must be the unanimous
5 decision of all jurors; therefore, it is your duty as jurors
6 to discuss the case with one another in the jury room.

7 You should try to reach agreement if you can do
8 this without going against what you believe to be true.

9 Each of you must come to your own decision, but
10 only after you have considered all the evidence, discussed
11 the evidence fully with your fellow jurors, and listened to
12 the views of your fellow jurors.

13 Do not be afraid to change your mind if the
14 discussion persuades you that you should.

15 But do not come to a decision just because other
16 jurors might think it's right or just to reach a unanimous
17 verdict. Remember, you are not for or against any party.
18 You are judges, judges of the facts. Your only job is to
19 study the evidence and decide what is true.

20 Third, during your deliberations, including during
21 any recess taken during deliberations, you must not,
22 directly or indirectly, communicate with or provide any
23 information to anyone by any means or by any medium about
24 anything related to this case until I accept your verdict
25 and discharge you from further service in this case.